Supreme Court, U. S.
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1977

No. 77-1824

ALBERT S. HART,
Petitioner,

versus

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR A WRIT OF CERTIORARI

To the United States Court of Appeals
For the Sixth Circuit

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TO THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES

The Petitioner, Albert S. Hart, prays that a Writ of Certiorari issue to review the opinion and judgment of the United States Court of Appeals for the Sixth Circuit entered and filed on March 31, 1977, affirming the Petitioner's conviction in the United States District Court for the Western District of Tennessee.

OPINIONS BELOW

On March 31, 1977, the United States Court of Appeals for the Sixth Circuit filed and entered its decision affirming the Petitioner's conviction (see Appendix A, p. A-1). On May 19, 1977, the United States Court of Appeals for the Sixth Circuit filed and entered an order denying the Petitioner's petition for a rehearing (see Appendix B, p. A-7).

JURISDICTION

The judgment of the United States Court of Appeals for the Sixth Circuit affirming the Petitioner's conviction was filed and entered on May 31, 1977. That Court's order denying the Petitioner's petition for a rehearing was filed and entered on May 19, 1977. The jurisdiction of this Court is invoked under 29 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

18 U.S.C. § 1005. Bank entries, reports and transactions

Whoever, being an officer, director, agent or employee of any Federal Reserve bank, member bank, national bank or insured bank, without authority from the directors of such bank, issues or puts in circulation any notes of such bank; or

Whoever, without such authority, makes, draws, issues, puts forth, or assigns any certificate of deposit, draft, order, bill of exchange, acceptance, note, debenture, bond, or other obligation, or mortgage, judgment or decree; or

Whoever makes any false entry in any book, report, or statement of such bank with intent to injure or defraud such bank,

or any other company, body politic or corporate, or any individual person, or to deceive any officer of such bank, or the Comptroller of the Currency, or the Federal Deposit Insurance Corporation, or any agent or examiner appointed to examine the affairs of such bank, or the Board of Governors of the Federal Reserve System—

Shall be fined not more than $5,000 or imprisoned not more than five years, or both.

As used in this section, the term "national bank" is synonymous with "national banking association"; "member bank" means and includes any national bank, state bank, or bank or trust company, which has become a member of one of the Federal Reserve banks; and "insured bank" includes any state bank, banking association, trust company, savings bank, or other banking institution, the deposits of which are insured by the Federal Deposit Insurance Corporation.

Tennessee Code Annotated § 47-8-319:

"Statute of frauds.—A contract for the sale of securities is not enforceable by way of action or defense unless

(a) there is some writing signed by the party against whom enforcement is sought or by his authorized agent or broker sufficient to indicate that a contract has been made for sale of a stated quantity of described securities at a defined or stated price; or

(b) delivery of the security has been accepted or payment has been made but the contract is enforceable under this provision only to the extent of such delivery or payment; or

(c) within a reasonable time a writing in confirmation of the sale or purchase and sufficient against the sender un-

der paragraph (a) has been received by the party against whom enforcement is sought and he has failed to send written objection to its contents within ten (10) days after its receipt; or

(d) the party against whom enforcement is sought admits in his pleading, testimony or otherwise in court that a contract was made for sale of a stated quantity of described securities as a defined or stated price."

QUESTIONS PRESENTED

I. Were the Entries Charged in the False Entry Counts "False" Within the Meaning of 18 U.S.C. § 1005?

II. Whether, in View of the Fact That the Defendants Cannot Be Guilty of Conspiring to Make False Entries, the Defendant's Conviction of Count One of Conspiring to Make False Entries and to Misapply Funds Is Valid?

STATEMENT OF THE CASE

On April 14, 1975, the defendant, Albert S. Hart (hereafter referred to as "Hart"), was indicted in a fourteen count indictment along with co-defendant, William Robert Grissom (Appendix C, p. A-9).

Count One charged both defendants with conspiring to commit two separate offenses—(1) the misapplication of the monies, funds, credits and securities of the Union Planters National Bank in Memphis (hereafter referred to as either "Union Planters" or "the bank") in violation of 18 U.S.C. § 656 and (2) the making of false entries in the books, reports and statements

of that bank in violation of 18 U.S.C. § 1005. Count One listed twenty-one overt acts. All of the substantive counts, Counts Two through Fourteen, were included in the overt acts listed in Count One.[1]

Each of the substantive counts charged Grissom, who at all relevant times was in charge of the bank's Investment Division, with either misapplying the bank's funds or making false entries in the bank's books, reports and statements. Each of the substantive counts charged Hart with aiding and abetting Grissom in the commission of those substantive offenses. Hart was at all relevant times the President and Chairman of the Board of A. S. Hart & Company, Inc., a dealer in municipal securities.

Both defendants were tried by the same jury on all fourteen counts. They were both convicted on March 4, 1976 on the conspiracy count (Count One) and on the false entry counts (Counts Two, Four, Six, Eight, Ten, Twelve and Thirteen). They were both acquitted on the misapplication counts (Counts Three, Five, Seven, Nine, Eleven and Fourteen).

On April 23, 1976 Hart was given concurrent twenty-one month prison sentences on Counts One, Two, Four, Six, Twelve and Thirteen, with eighteen months on each count suspended. Additionally, as to each of those counts, Hart was placed on probation for eighteen months, the periods of probation to run concurrently. On Count Eight Hart was sentenced to three months in prison with no probation, that sentence to run con-

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[1] Count two corresponds with overt acts Nos. 1 and 2; Count Three corresponds to overt act No. 3; Count Four corresponds to overt act No. 4; Count 5 corresponds to overt act No. 5; Count Six corresponds to overt act No. 6; Count Seven corresponds to overt act No. 7; Count Eight corresponds to overt acts Nos. 10 and 11; Count Nine corresponds to overt act No. 12; Count Ten corresponds to overt acts Nos. 13 and 14; Count Eleven corresponds to overt act No. 15; Count Twelve corresponds to overt acts Nos. 16 and 17; Count Thirteen corresponds to overt acts Nos. 19 and 20; and Count Fourteen corresponds to overt act No. 21.

currently with the three month prison sentences imposed on the previously mentioned counts. Finally, on Count Ten Hart received a suspended sentence with an eighteen month probation period to run concurrently with the eighteen month probation periods imposed on the previously mentioned counts. (See Judgment and Commitment Order, Appendix W, p. A-49).

Hart now appeals from the judgment of conviction on the conspiracy count and the false entry counts.

STATEMENT OF FACTS

The facts will be stated in the light most favorable to the government. Thus, as stated herein, the facts, we believe, will not be disputed by the government.

The banking transactions which are the subject of this case may be divided into two categories. The first category of transactions occurred in 1971 and involved a block of Federal Land Bank bonds carrying a 5.30% interest rate and a due date of October 21, 1974. This first category of transactions constituted the subject matter of both the first nine overt acts listed in the conspiracy count (Count One) and substantive Counts Two through Seven. The second category of transactions constituted the subject matter of both overt acts 10 through 21 of Count One and substantive Counts Eight through Fourteen. These transactions occurred during the period running from December 28, 1972 until July 5, 1973. For reasons which will hereafter be shown, they are referred to as the "parking" transactions.

The remainder of this discussion of the facts is divided into three sections. In Section A we discuss and define the term "repurchase agreement". A complete understanding of this type of transaction is central to a basic perception of the facts of this case. Section B deals with the 1971 transactions in-

volving the Federal Land Bank bonds. Section C discusses the facts pertaining to the second category of transactions, the "parking" transactions.

A. Repurchase Agreement.

Both categories of transactions involved certain oral repurchase agreements made between the bank, acting through Grissom, and Hart, acting either individually or as the chief executive officer of his company, A. S. Hart & Company. It was through the use of these oral repurchase agreements that Hart and Grissom committed the acts complained of in the indictment.

A repurchase agreement is an agreement pursuant to which one party sells a security, or block of securities, to another party subject to an agreement to buy the securities back at a later time at the same price. The buyer receives for the period of time during which he holds the securities an agreed upon rate of interest. Thus, a repurchase agreement is really a loan which is secured by the subject securities. The buyer lends the seller the purchase price of the securities and receives in return an agreed upon rate of interest.

Because a repurchase agreement is really a loan, with the seller obligated to pay off the loan by buying the subject securities back at the same price for which they were sold, the price, often par value, is set without regard to the market value of the securities. Thus, on a daily basis, banks, including Union Planters, in order to borrow money, will sell blocks of securities at par value subject to agreements to repurchase those securities for the same prices even though the market values of the securities may be above or below par. At the same time, banks will routinely, as as means of lending money, buy blocks of securities at par subject to agreements to resell those securities for the same price, even though the market value may be above or below par.

Repurchase transactions made in Tennessee, in order to be enforceable, must be made in writing. (See the applicable Tennessee Statute of Frauds, T.C.A. § 47-8-319, the provisions of which are set out verbatim *supra* at p. 3 and *infra* at p. 25. Naturally, at all relevant times, bank policy required that such repurchase transactions be made in writing. In the situation where the bank sold securities subject to an agreement to repurchase, the initial confirmation to the bank's customer was supposed to contain the notation "repurchase", or "R/P", thus indicating that the securities were subsequently to be repurchased by the bank at the same price. The sale was then recorded in a special ledger for those securities as a "sale subject to repurchase agreement", thereby denoting as a liability the bank's obligation to repurchase the securities. In the situation where the bank purchased securities subject to an agreement to resell the securities at the same price (that is, where the bank was the lender), the bank's purchase confirmation to the customer was supposed to bear a notation appropriately designating the customer's agreement to repurchase the securities from the bank at the same price. The purchase was then recorded in a special ledger as a "purchase subject to agreement to resell", thereby denoting as an asset the customer's obligation to repurchase the securities from the bank at the same price for which they were originally purchased from the customer by the bank.

With this basic description of a repurchase agreement in mind, we can now focus on the transactions which are the subject of this indictment.

B. 1971 Federal Land Bank Transactions.

In this Section we shall discuss the transactions pertaining to the Federal Land Bank bonds. As noted above, these bonds were involved in the transactions dealt with in Counts Two through Seven and in the first nine overt acts listed in Count

One. All of these counts are interrelated because they arose out of the same series of transactions. It will therefore be necessary to make brief references to each of the substantive counts, even though the defendants were acquitted on certain of them.

On April 8, 1971 Hart contracted to purchase from Union Planters, at the par value of $1,000,000, a block of one thousand Federal Land Bank bonds having a 5.30% coupon rate and a maturity date of October 21, 1974. The settlement date was April 20, 1971, which also was the issue date—that is, the date on which the Federal Land Bank was to issue the bonds.[2] A confirmation reflecting the sale was issued by the bank to Hart on April 8th.[3]

Though the April 8th confirmation showed that only Hart had an interest in the bonds, Grissom and Hart had, in fact, entered into a limited joint venture with respect to these bonds. That is, Hart and Grissom agreed on or about April 8th to share equally whatever profits or losses were made during the life of this particular joint venture.[4]

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[2] This transaction constituted an example of "when issued" trading, a term to which constant reference was made throughout the trial. On or shortly before April 8, 1971 the Federal Land Bank announced that it was issuing the bonds on April 20, 1971 and that the bonds would therefore be available for purchase on that date, the "issue date". Union Planters subscribed to a sizable block of the bonds and, prior to the issue date, contracted to sell portions of the bonds to a number of its customers, including Hart. By so contracting, the customer obligated himself to take delivery of and pay for the bonds on the issue date, April 20, 1971. Hence, the customers were contracting to pay for the bonds "when issued".

[3] All records of this confirmation were lost. However, both defendants readily admitted the existence of the confirmation at the trial and in their statements to F.B.I. agents. Moreover, throughout the relevant time period in 1971 there was never any attempt by the defendants to deny the fact that Hart had contracted to purchase the bonds.

[4] The joint venture was terminable at the will of either party. In this particular instance, Grissom terminated the joint venture. However, there was a dispute at the trial over just when Grissom

Without Hart's knowledge, Grissom, in turn, agreed with another officer of the bank, Thomas Murrey, to share equally the losses or profits made by Grissom during the term of his joint venture with Hart.[5]

As noted above, neither Grissom's agreement with Hart, nor his agreement with Murrey, were disclosed to the bank. The April 8th confirmation only reflected a sale to Hart. It made no mention of Grissom's and Murrey's interest in the bonds.

Count Two charged that the failure to disclose Grisom's and Murrey's interest in the bonds constituted a false entry. That count provided as follows:

> "On or about April 8, 1971, in the Western District of Tennessee, the Defendants, William Robert Grissom, and Albert S. Hart, being aided, abetted, counseled and induced to act by each other, with intent to deceive the senior officers of the Union Planters National Bank of Memphis, the deposits of which were insured by the Federal Deposit

terminated his interest in the bonds. The defendants contended that Grissom terminated the agreement on the issue date, April 20th. The government contended that Grissom did not terminate the agreement until long after the issue date. In so contending, the government relied on the fact that Grissom did not issue Hart a check covering his losses until June 15th, almost two months after the issue date. The defendants, noting that the amount of Grissom's check to Hart was $7,500 and that the market value of the bonds on April 20th had dropped $15,000 below Hart's purchase price, argued that the June 15th check accurately represented one-half of the loss sustained as of April 20th. Had Grissom not terminated the agreement until June 15th (the date of the check), the defendants argued, Grissom's share of the loss would have been much greater than $7,500, as the market value of the bonds on June 15th had declined to approximately $955,000. In any event, we do not believe that a resolution of this factual dispute is necessary to a determination of the issues presented in this petition.

[5] As noted in the immediately preceding footnote, Grissom paid Hart $7,500 as his share of the losses sustained during the course of this particular joint venture. In accordance with his agreement with Murrey, Murrey paid Grissom $3,750 as his share of the loss on the bonds.

> Insurance Corporation, did wilfully and knowingly make and cause to be made in the books, reports and statements of said Bank, a false entry, that is, the said Defendants made and caused to be made an entry indicating that A. S. Hart was the sole bidder on certain securities, to-wit, Federal Land Bank Bonds ($1,000,000.00 par value) to be issued April 20, 1971, whereas, in truth and fact, as the said Defendants then knew, A. S. Hart had only a fifty (50%) per cent interest in said securities bid and the Defendant, William Robert Grissom, and Thomas W. Murrey, each had a Twenty-Five (25%) per cent interest in said securities bid; in violation of Title 18, United States Code, Section 1005 and Section 2."

The jury convicted the defendants on this count.

On April 20th the market value of the bonds had dropped to $985,000.00, and Hart did not take delivery of and pay for the bonds as he had on April 8th contracted to do. Instead, the bank (per Grissom) agreed to carry the bonds for Hart in the bank's trading account, with Hart orally agreeing with Grissom to pay the bank the agreed upon $1,000,000 purchase price at a later time. By carrying the bonds in the bank's trading account Grissom was treating the bonds, for accounting purposes, as if the bank owned the bonds, even though he and Hart had an unwritten understanding that Hart would subsequently purchase the bonds for the $1,000,000 price he had agreed to pay on April 8th. In effect, the transaction constituted a loan, secured by the bonds, from the bank to Hart, with the bank lending $1,000,000 to Hart and receiving in return the 5.30% coupon rate on the bonds.

On June 15, 1971, at a time when the market value of the bonds had dropped to $955,000.00, Hart took delivery of the bonds and paid the agreed upon purchase price of $1,000,000. He was able to do so by virtue of the fact that another bank, Houston National Bank, agreed to carry the bonds for him at

par. (See Union Planters' confirmation of this sale, Appendix D, p. A-25)[6] The June 15, 1971 sale by the bank to Hart was recorded on the trading account ledger for those bonds as a final sale. (See Union Planters' trading account ledger for these bonds, Appendix E, p. A-26.)

Count Three of the indictment charged that a misapplication occurred because Union Planters was caused to use its funds to carry the Federal Land Bank bonds in its trading account from April 20, 1971 until June 14, 1971.[7] The jury acquitted both defendants on this count.

Count Four charged that the recording of the June 15th sale from the bank to Hart as a final sale constituted a false entry. More specifically, Count Four charged that the entry falsely represented that Hart had agreed to purchase and pay for the bonds on that date, when, in fact, Hart had originally agreed to purchase and pay for the bonds on April 20th and had failed to do so. Count Four stated as follows:

> "On or about June 14, 1971, in the Western District of Tennessee, the Defendants, William Robert Grissom, and Albert S. Hart, being aided, abetted, counseled and induced to act by each other, with intent to receive the senior officers of the Union Planters National Bank of Memphis, the deposits of which were insured by the Federal Deposit Insurance Corporation, did wilfully and knowingly make and cause to be made in the books, reports and statements of said Bank, a false entry, that is, the said Defendants made and caused to be made an entry indicating that

[6] This confirmation, like all the confirmations and ledger sheets referred to herein, was introduced into evidence during the government's proof. This particular sale was really made to the Houston National Bank for the account of Albert S. Hart.

[7] The reference in the indictment to June 14, 1971 is a mistake. The correct date was June 15, 1971.

> A. S. Hart and Company had agreed on June 14, 1971,[8] to purchase and pay for on that date certain securities, to-wit, Federal Lank Bank Bonds ($1,000,000.00 par value), whereas, in truth and fact, as the said Defendants then knew, A. S. Hart had previously agreed to purchase and pay for the said securities on April 20, 1971, but had failed to pay for said securities when issued on April 20, 1971; in violation of Title 18, United States Code, Section 1005 and Section 2."

The jury convicted the defendants on this count.

Houston National Bank carried the Federal Land Bank bonds for Hart for one month, until July 15, 1971. At that time the market value of the bonds was $951,250.

On July 15th Union Planters (per Grissom) agreed once again to carry the bonds for Hart. Insisting this time upon a margin of $35,000, Grissom, acting for the bank, purchased the bonds for $965,000, subject to Hart's unwritten agreement to repurchase the bonds for $965,000 at a later time. (See Union Planters' confirmation of this purchase, Appendix F. p. A-27). The transaction was recorded on the bank's trading account ledger as a final sale, despite Grissom's and Hart's unwritten understanding that Hart would subsequently repurchase the bonds. (See Union Planters trading account ledger for these bonds, Appendix E, p. A-26).

Count Five charged that a misapplication occurred on July 14th,[9] because the purchase by the bank from Hart was for a price in excess of the bonds' then market value. The jury acquitted the defendants on this count.

[8] As noted in the immediately preceding footnote, Count Four should have stated the date to be June 15th, not June 14th.

[9] The indictment should have stated the date to be July 15th, not July 14th.

Count Six charged that the recording of the July 15th sale by Hart to the bank as a "final sale" constituted a false entry, because the defendants knew that the sale was not final, but was instead made subject to Hart's unwritten agreement to repurchase the bonds. Count Six provided as follows:

> "On or about July 14, 1971,[10] in the Western District of Tennessee, the Defendants, William Robert Grissom and Albert S. Hart, being aided, abetted, counseled and induced to act by each other, with intent to deceive the senior officers of the Union Planters National Bank of Memphis, the deposits of which were insured by the Federal Deposit Insurance Corporation, did wilfully and knowingly make and cause to be made in the books, reports and statements of the said Bank, a false entry, that is, the said Defendants made and caused to be made an entry indicating that the sale to the said Bank by A. S. Hart and Company of certain securities, to-wit, Federal Land Bank Bonds ($1,000,000.00 par value) for the principal amount of $965,000.00, was a final sale, whereas, in truth and fact, as the said Defendants then knew, the said sale was made pursuant to an unwritten repurchase agreement whereby Bert Hart could repurchase said securities from the said Bank for the principal amount of $965,000.00 regardless of the current market value for said securities; in violation of Title 18, United States Code, Section 1005 and Section 2."

The jury convicted the defendants on this count.

Union Planters carried the bonds in its trading account from July 15, 1971 until October 20th. As was the case when these bonds were carried the first time, the bank received during this period the 5.30% coupon rate on the bonds.[11]

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[10] *Ibid.*

[11] Of course, Union Planters' interest yield was actually higher than 5.30%, because the 5.30% coupon rate was based on par value of $1,000,000, whereas Union Planters had paid Hart only $965,000 for the bonds.

On October 20, 1971, Hart carried out the second half of the unwritten repurchase agreement entered into on July 15, 1971 by purchasing the bonds from Union Planters for $965,000 (See Union Planters' confirmation of its sale to Hart, Appendix G, p. A-28). Then, on the same day, Hart sold the bonds back to Union Planters for $984,375, that amount being slightly less than the market value of the bonds on that date. (See Union Planters' confirmation of this purchase, Appendix H, p. A-29.) Union Planters, in turn, sold the bonds on the same day to Harris Trust & Savings of New York for $985,312.50. (See Union Planters' confirmation of this sale, Appendix I, p. A-30.)

Count Seven charged that a misapplication occurred on October 20th when Hart carried out the second half of the unwritten repurchase agreement by purchasing the bonds from Union Planteds for $965,000, because the market value of the bonds was at that time in excess of that figure. The jury acquitted the defendants on this count.

C. **Parking Transactions.**

Counts Eight through Fourteen involve certain "parking transactions" which occurred between December 28, 1972 and July 5, 1973. Pursuant to these transactions, the bank (per Grissom), on three separate occasions, sold certain securities to Hart just prior to the end of a financial period. These sales were made subject to an undisclosed, oral agreement by the bank to repurchase the securities from Hart after the end of the financial period.

The particular securities involved were at all relevant times being held by the bank in its trading account. In accordance with an established bank policy and accepted accounting techniques, the bank's investment division, which was then headed by Grissom, was required at the end of each quarterly financial

period to evaluate each issue of securities in the bank's trading account at the lower of that security's book or market value. Thus, if the market value of a certain security dropped below the security's cost to the bank (book value), it had to be "written down" at the end of the quarter to its market value.

The market values of the particular securities involved in these parking transactions had declined substantially below their book value at the time the oral repurchase agreements were made. In order, therefore, to "remove" the securities from the bank's trading account holdings and thus avoid showing on the bank's financial reports the losses incurred on the acquisition of those securities, Grissom "parked" the bonds with Hart by having the bank sell them to Hart shortly before the end of the quarter at prices well in excess of market value. Then, pursuant to an undisclosed, oral agreement with Hart, the bank (per Grissom) bought them back for the same (or virtually the same) prices shortly after the end of the quarter. The initial sale to Hart was recorded, not as a repurchase transaction, but instead as a "final sale".

With this understanding of the purpose of the parking transactions in mind, let us now look briefly at each of the remaining substantive counts, Counts Eight through Fourteen.

On December 28, 1972, Union Planters (per Grissom) sold Hart one hundred fifty Pittston, Inc. convertible debentures 4%, due July 1, 1997 and hereafter referred to as "Pittstons") for $117,000, when their market value was only $101,437. (See Union Planters' confirmation of this sale, Appendix J, p. A-31).

Also, on the same date, the bank (per Grissom) sold Hart four hundred Louisiana Land Offshore Exporation Company, Inc. units (1% debentures due October 1, 1982 and 8,000 shares of common stock and all hereafter referred to as "Louisianas") for $376,000, when their market value was only

$354,500. (See Union Planters' confirmation of this sale, Appendix K, p. A-32).

These December 28th sales were recorded on the bank's trading account ledgers for the Pittstons and Louisianas as final sales, even though Hart and Grissom had an oral understanding that the bank would repurchase the securities for virtually the same price. (See Union Planters' trading account ledgers for the Pittstons and Louisianas, Appendix L, p. A-33 and A-34). On January 12, 1973, the bank did in fact repurchase the Pittstons for $117,375 and the Louisianas for $377,000. (See Union Planters' confirmations of these purchases, Appendix M, p. A-35 and A-36).

Count Eight charged that a false entry was made on December 28th, because the sales by Union Planters to Hart on that day were recorded as final sales when, in fact, the defendants knew that the sales were made pursuant to an unwritten agreement to repurchase the securities for the same prices for which they were sold. Count Eight provided as follows:

> "On or about December 28, 1972, in the Western District of Tennessee, the Defendants, William Robert Grissom, and Albert S. Hart, being aided, abetted, counseled and induced to act by each other, with intent to deceive the senior officers of the Union Planters National Bank of Memphis, the deposits of which were insured by the Federal Deposit Insurance Corporation, and with intent to deceive the Comptroller of the Currency, did wilfully and knowingly made and cause to be made in the books, reports and statements of the said Bank a false entry, that is, the said Defendants made and caused to be made an entry indicating that the sale of certain securities, to-wit, Pittston, Inc., convertible debentures ($150,000.00 par value) and Louisiana Land Offshore Exporation Company, Inc., Units ($400,000.00 par value) by the said Bank to

A. S. Hart and Company was a final sale, whereas, in truth and fact, as the said Defendants then knew, the said sale was not a final sale; in violation of Title 18, United States Code, Section 1005 and Section 2."

Count Nine charged that a misapplication occurred on January 12th, the date on which Union Planters repurchased the securities from Hart, because the prices paid by Union Planters were in excess of the market value of the securities. The jury acquitted the defendants on this count.

On March 28, 1973 Grissom "parked" the Pittstons and Louisianas with Hart again. The bank sold Hart one hundred fifty Pittstons for $111,000, when their market value was only $87,750, and three hundred Louisianas for $274,500, when their market value was only $259,875. (See Union Planters' confirmations of these sales, Appendix N, pp. A-37 and A-38.) On that same date the bank also sold Hart three hundred Ford Motor Credit Company convertible debentures (4⅞%, due July 15, 1998 and hereafter referred to as "Ford Motors") for $315,000 when their market value was only $281,250. (See Union Planters' confirmation of this sale, Appendix O, p. A-39.) As was the case with the first parking transaction, the March 28th sales were recorded on the trading account ledgers for these securities as final sales, even though Grissom and Hart had an unwritten understanding that, after the end of the financial period, the bank would repurchase the securities for the same price for which they were sold. (See Union Planters' trading account ledgers for the Pittstons, Louisianas and Ford Motors, Appendix L, pp. A-33, A-34 and Appendix P, p. A-40). On April 3, 1973 the bank did in fact repurchase the Pittstons, Louisianas and Ford Motors at the same prices for which they had been sold to Hart on March 28th. (See Union Planters' confirmations of these purchases, Appendix Q, pp. A-41, A-42 and A-43.)

Count Ten charged that the recording of the March 28th sales as final sales constituted a false entry. Count Ten charged as follows:

"On or about March 28, 1973, in the Western District of Tennessee, the Defendants, William Robert Grissom, and Albert S. Hart, being aided, abetted, counseled and induced to act by each other, with intent to deceive the senior officers of the Union Planters National Bank of Memphis, the deposits of which were insured by the Federal Deposit Insurance Corporation, and with intent to deceive the Comptroller of the Currency, did wilfully and knowingly make and cause to be made in the books, reports and statements of the said Bank a false entry, that is, the said Defendants made and caused to be made an entry indicating that the sale of certain securities, to-wit, Ford Motor Credit Company convertible debentures ($300,000.00 par value), Pittston, Inc. convertible debentures ($150,000.00 par value), and Louisiana Land Offshore Exploration Company, Inc. Units ($300,000.00 par value), by the said Bank to A. S. Hart and Company was a final sale, whereas in truth and fact, as the said Defendants then knew, the said sale was not a final sale; in violation of Title 18, United States Code, Section 1005 and Section 2.

The jury convicted the defendants on this count.

Count Eleven charged that a misapplication occurred on April 3, 1973, the date on which the bank repurchased the securities, because the prices paid by the bank were in excess of the market values of the securities. The jury acquitted the defendants on this count.

On June 27, 1973 Grissom "parked" the Ford Motors with Hart again. On that day the bank sold Hart seven hundred Ford Motors for $689,500 when their market value was only $574,875. (See Union Planters' confirmation of this sale, Ap-

pendix R, p. A-44.) This sale was recorded in the applicable trading account ledger as a final sale, even though Grissom and Hart had an oral understanding that, after the end of the financial period, the bank would repurchase the securities for the same price for which they were sold to Hart. (See Union Planters' trading account ledger for the Ford Motors, Appendix P, p. A-40.)

Additionally, on the same day, June 27th, Hart sold the bank one thousand Federal National Mortgage Association debentures (7.05%, due June 10, 1992 and hereafter referred to as "FNMA's") for $951,250, which was at that time the market value of the debentures. (See Union Planters' confirmation of this purchase, Appendix S, p. A-45.) This sale was made subject to Hart's unwritten agreement to repurchase the bonds at the same time the bank repurchased the aforementioned Ford Motors. The bank's purchase of the FNMA's was recorded on the bank's trading account ledger for the FNMA's as a final purchase, even though Hart and Grissom had an oral agreement that Hart would repurchase the debentures. (See Union Planters' trading account ledger for the FNMA's, Appendix T, p. A-46.)

The government contended—and we do not dispute for purposes of this discussion—that Grissom agreed to have the bank purchase the FNMA's from Hart in order to give Hart the financial capability to carry the Ford Motors for the bank over the end of the financial period ending June 30, 1973.

On July 5, 1973, the bank repurchased the Ford Motors from Hart for $689,500, the same price for which the debentures had been sold to Hart on June 27th. (See Union Planters' confirmation of this purchase, Appendix U, p. A-47.) On the same day Hart repurchased the FNMA's from the bank for the same price for which he had sold those securities to the bank on June 27th. (See Union Planters' confirmation of this sale, Appendix V, p. A-48.)

Count Twelve charged that the recording of the bank's June 27th purchase of the FNMA's as a final purchase constituted a false entry, because the defendants had an unwritten agreement that Hart would repurchase the securities. Count Twelve provided as follows:

> "On or about June 27, 1973, in the Western District of Tennessee, the Defendants, William Robert Grissom, and Albert S. Hart, being aided, abetted, counseled and induced to act by each other, with intent to deceive the senior officers of the Union Planters National Bank of Memphis, the deposits of which were insured by the Federal Deposit Insurance Corporation, and with intent to deceive the Comptroller of the Currency, did wilfully and knowingly make and cause to be made in the books, reports and statements of the said Bank a false entry, that is, the said Defendants made and caused to be made an entry indicating that the purchase of certain securities, to-wit, Federal National Mortgage Association debentures ($1,000,000.00 par value), by the said Bank from A. S. Hart and Company was a final purchase, whereas, in truth and fact, as the said Defendants then knew, the said purchase was not a final purchase; in violation of Title 18, United States Code, Section 1005 and Section 2."

The jury convicted the defendants on this count.

Count Thirteen charged that the recording of the June 27th sale of the Ford Motors to Hart as a final sale constituted a false entry, because the defendants had an unwritten agreement that the bank would repurchase the securities after the end of the financial period. That count provided as follows:

> "On or about June 27, 1973, in the Western District of Tennessee, the Defendants, William Robert Grissom, and Albert S. Hart, being aided, abetted, counseled and induced to act by each other, with intent to deceive the

senior officers of the Union Planters National Bank of Memphis, the deposits of which were insured by the Federal Deposit Insurance Corporation, and with intent to deceive the Comptroller of the Currency, did wilfully and knowingly make and cause to be made in the books, reports and statements of the said Bank a false entry, that is, the said Defendants made and caused to be made an entry indicating that the sale of cetrain securities, to-wit, Ford Motor Credit Company convertible debentures ($700,-000.00 par value), by the said Bank to A. S. Hart and Company was a final sale, whereas, in truth and fact, as the said Defendants then knew, the said sale was not a final sale; in violation of Title 18, United States Code, Section 1005 and Section 2."

The jury convicted the defendants on this count.

Count Fourteen charged that the bank's purchase of the Ford Motors on July 5, 1973 constituted a misapplication because the purchase price was in excess of the then market value of the debentures. The jury acquitted the defendants on this count.

REASONS FOR GRANTING THE WRIT

The lower courts' construction of 18 U.S.C. § 1005 in this case constitutes a dramatic and unwarranted departure from well established decisions of this court and the courts of the sixth and other circuits.

This discussion consists of two parts. Part I deals with Issue I; Part II discusses Issue II.

I. ISSUE I

Were the entries charged in the false entry counts "false" within the meaning of 18 U.S.C. § 1005?

In the immediately preceding discussion of the facts, we set forth the evidence in the light most favorable to the government. We shall now show that the evidence, even when so viewed, demonstrates that the entries in question were not "false" within the meaning of 18 U.S.C. § 1005. We shall show that these entries instead accurately reflected transactions which actually occurred and that, for this reason, they were not "false" within the meaning of the statute.

Each defendant moved for a directed verdict, both at the close of the government's proof and at the close of all of the proof. Specifically, the defendants moved the Court to hold, *inter alia*, that the entries were not "false" within the meaning of the statute and to dismiss Counts Two, Four, Six, Eight, Ten, Twelve, Thirteen and that portion of Count One which charged conspiracy to make and cause to be made false entries. Because the entries were not "false" within the meaning of the statute, the District Court erred in not granting the aforesaid motions.

For purposes of this discussion we shall divide the applicable counts into four categories. Section A focuses on Counts Six, Eight, Ten, Twelve and Thirteen; Section B deals with Count Four; Section C discusses Count Two; and Section D is concerned with Count One. Finally, Section E contains a conclusion of our discussion of this issue.

A. Counts Six, Eight, Ten, Twelve and Thirteen.

Each of the counts discussed herein involved the method by which certain oral repurchase agreements were recorded on the books of Union Planters. The basis for each count was that the transactions were recorded by the bank as final sales (or, in the cases of Counts Six and Twelve, final purchases) when, in fact, the defendants knew that they were not "final", but rather were made subject to an oral agreement by the bank to repurchase (or, in the case of Counts Six and Twelve, to resell).

Counts Eight, Ten, Twelve and Thirteen involved the parking transactions. Counts Eight, Ten and Thirteen involved transactions in which Grissom sold Hart securities before the end of a financial period with an oral agreement to repurchase them after the end of the particular accounting period in question. Count Twelve involved the June 27, 1973 transaction in which Grissom purchased the FNMA's from Hart with an oral agreement to resell the securities after the close of the accounting period terminating on June 30, 1973. The purpose of this transaction was to make available the funds which Hart used to purchase the Ford Motors which Grissom sold him on the same day.

Count Six was one of the counts arising out of the 1971 transactions involving the Federal Land Bank bonds. Like Count Twelve, Count Six involved a purchase of securities by the bank with an oral agreement to resell the bonds to Hart.

As noted above, the government contends that the recording of these transactions on the bank's books and records as "final" sales or purchases constituted false entries. In making this contention, the government is clearly mistaken. These entries, as will hereafter be shown, accurately recorded the transactions which actually occurred. Therefore, they were not "false" within the meaning of 18 U.S.C. § 1005. *Coffin v. United States*, 156 U.S. 432, 39 L.Ed. 481 (1894); *Hayes v. United States*, 160 F. 101 (8th Cir. 1909); *United States v. Docherty*, 468 F. 2d 989 (2nd Cir. 1972); and *Arizona v. Heron*, 94 Ariz. 81, 381 P.2d 764 (Sup. Ct. 1963).

An appropriate analysis of this issue demands that we ask two questions: (1) What transactions did the entries record as having occurred and (2) what transactions actually did occur? If the answers to both questions are the same, the entries were not false.

The first question has already been answered. The entries reflected that final sales (or purchases) were made. Let us now turn to the second question and ask what transactions actually did occur on those dates.

In answering this question, it is important to note that unwritten agreements to sell or purchase securities are unenforceable in Tennessee, because they are in violation of the Tennessee Statute of Frauds, Tennessee Code Annotated § 47-8-319, which provides that such agreements must be made in writing. That statute provides as follows:

> "Statute of frauds.—A contract for the sale of securities is not enforceable by way of action or defense unless
>
> (a) there is some writing signed by the party against whom enforcement is sought or by his authorized agent or broker sufficient to indicate that a contract has been made for sale of a stated quantity of described securities at a defined or stated price; or

(b) delivery of the security has been accepted or payment has been made but the contract is enforceable under this provision only to the extent of such delivery or payment; or

(c) within a reasonable time a writing in confirmation of the sale or purchase and sufficient against the sender under paragraph (a) has been received by the party against whom enforcement is sought and he has failed to send written objection to its contents within ten (10) days after its receipt; or

(d) the party against whom enforcement is sought admits in his pleading, testimony or otherwise in court that a contract was made for sale of a stated quantity of described securities as a defined or stated price."

By virtue of this statute, Union Planters' oral agreements with Hart to repurchase (Counts Eight, Ten and Thirteen) and to resell (Counts Six and Twelve) were, *on the dates they were made*, unenforceable. That is, the bank was not, on the dates the repurchase agreements were made, legally required to repurchase from Hart the securities sold to Hart in December of 1972 and March and June of 1973, and Hart was not legally required to repurchase from the bank the Federal Land Bank bonds which he sold the bank on July 15, 1971 or the FNMA's which he sold the bank in June of 1973.

It can be seen from the foregoing that, on the dates the entries were made, sales were made subject to oral, unenforceable agreements to repurchase. Because the repurchase agreements were unenforceable, the transactions were actually final sales (or, in the case of Counts Six and Twelve, final purchases). That is to say, taking into account, as we must, the legal picture existing on the dates the recorded tranactions took place, those transactions were, in fact, final sales (or purchases). The entries themselves, by recording the transactions as final sales (or purchases), accurately recorded the transactions which actually occurred. Because the entries accurately recorded the transactions which actually occurred, they were not "false" within the meaning of the statute.

Perhaps this can better be illustrated by asking how else could these oral, unenforceable agreements have been recorded. If Grissom had recorded these transactions in the bank's repurchase ledgers, thereby indicating that the agreements were enforceable, he would clearly have been guilty of making false entries for the simple reason that the agreements were not legally enforceable. In short, given the undisputed fact that the agreements were, on the dates they were made, unenforceable, recording the transactions as final sales and purchases was the only way to record the transactions accurately.

Furthermore, even if we assume that the defendants were guilty of fraudulent conduct, such conduct, if any, occurred not as a result of the way in which the transactions were entered on the bank's books, but rather as a result of the manner in which the defendants made the transactions. By making oral, unenforceable repurchase agreements, the defendants admittedly violated a bank policy which required such agreements to be made in writing. However, even assuming that this was fraudulent, it still is not enough to bring the defendants' conduct within the purview of 18 U.S.C. § 1005. That statute is violated only if the entries themselves were false, and, as shown above, the entries were not "false" within the meaning of 18 U.S.C. § 1005.

Having advanced the proposition that the entries covered by the previously discussed counts were not false, we shall now show that the applicable case law gives unequivocal support to that proposition.

Over the years a number of cases have dealt with the question of what constitutes a "false" entry within the meaning of 18 U.S.C. § 1005 and its statutory predecessors.

One of the leading and most often cited cases on this subject is *Coffin v. United States*, 156 U.S. 432, 39 L.Ed. 481 (1894). In that case a bank officer extended credit to a company he knew to be insolvent by taking back from the company a note payable to the bank. He then recorded the note as a liability of the borrowing company to the bank.

The trial court's instructions gave the impression that the recording of the transaction as a note executed by the borrowing company in favor of the bank was false, even though the transaction as recorded was consistent with what actually happened. The Supreme Court reversed the defendant's conviction on the grounds that the trial court's charge was an erroneous statement of the law. The court held that, though the defendant may have misapplied funds of the bank in extending credit to a borrower who was insolvent, the entry by which he recorded the transaction as a legal liability of the borrower to the bank nevertheless accurately portrayed what the defendant had done and thus could not be a "false" entry within the meaning of § 5209, one of the forerunners to 18 U.S.C. § 1005. The Court had the following to say about the trial court's instructions at 156 U.S. 463, 39 L.Ed. 494:

> "We think the language used must have tended to confuse the jury and leave upon their minds the impression that if the transaction represented by the entry actually occurred, but amounted to a misapplication, then its entry exactly as it occurred constituted 'a false entry;' in other words, that an entry would be false, though it faithfully described an actual occurrence, unless the transaction which it represented involved full and fair value for the bank. *The thought thus conveyed implied that the truthful entry of a fraudulent transaction constitutes a false entry within the meaning of the statute. We think it is clear that the making of a false entry is a concrete offense which is not committed where the transaction entered actually took place, and is entered exactly as it occurred.*" (Emphasis added.)

In *Coffin*, the entry, though it failed to disclose the note maker's insolvency, was, when viewed in the context of the legal realities existing on the date the entry was made, an accurate recording of the transaction which actually occurred. That is, the entry stated that a liability from the note maker to the bank was created, and this is precisely what occurred. Therefore, the court held that the entry was not false. Similarly, in the instant case, the entries, though they failed to disclose the oral repurchase agreements, were, when viewed in the context of the legal picture existing on the dates the entries were made, accurate representations of the transactions which took place. That is, the entries stated that final sales (in some instances, final purchases) occurred, and, because the undisclosed oral repurchase agreements were not enforceable, final sales (or purchases) did in fact occur. Thus, just as was the case with the entry in *Coffin*, the entries discussed herein likewise were not "false" within the meaning of the statute.

In *Hayes v. United States*, 160 F. 101 (8th Cir. 1909), the defendant was the cashier of a bank in such dire financial condition that it could not pay its officers' salaries without impairing the bank's capital. In fact, for five months the officers had not been paid, the sum of the owed salaries being $1,125.00.

In lieu of receiving salaries, the officers overdrew their accounts to the extent of the unpaid salaries. Thus, the aggregate of the overdraft was $1,125.00.

A bank examiner, upon discovering the overdraft, insisted that the overdrafts be made good. To accomplish this, the officers induced a friend named Ray Farmer to make an accommodation note in the amount of $1,125.00 to the bank. The proceeds of the note went directly to the officers, who made the overdrafts good. The effect of this transaction was to render

Farmer directly liable to the bank on the note; however, it was clearly understood between the officers and Farmer that the officers would pay off the note.

The transaction was reported as a loan to Farmer in the bank's report to the Comptroller. The government contended that the entry was false because it did not disclose the fact that the defendants had agreed with Farmer to pay off the loan.

Disagreeing with this contention, the court held that recording the transaction as a loan for which Farmer alone was liable was an accurate statement of what really happened. Pointing out that Farmer was the only person who had signed and was thus obligated on the note, the court concluded that the transaction, from the standpoint of the legal picture existing at the time of the transaction, was, in fact, one in which only Farmer was liable to the bank. The court further concluded that the entry, by so recording the transaction, was not false.

Turning to more recent cases in *United States v. Docherty*, 468 F.2d 989 (2nd Cir. 1972), the defendant was convicted of conspiracy to make false entries on a bank's books and to misapply bank funds. He was also convicted on four substantive counts of aiding and abetting misapplication.

The facts were as follows: The defendant, Robert Docherty, and one Edward Evans, an officer in the Installment Loan Division of the subject bank, were close friends. Evans induced Docherty to apply for loans with the bank and turn the proceeds over to Evans. In carrying out this arrangement, Docherty filled out loan applications, leaving blank the space where he was supposed to state the purpose of the loan. Docherty then gave the proceeds of the loan to Evans. On some occasions Docherty even left blank the spaces in which the loan amounts were to be stated and allowed Evans to fill them in. Subsequently, the bank issued checks payable in the amount of the loans to Docherty, and Docherty endorsed the checks over to Evans.

Evans persuaded Docherty to participate in this scheme by telling Docherty that he, Evans, was not allowed to borrow from either his bank or any other bank. Docherty of course participated under the assumption that Evans would pay off the loans. As it turned out, Evans, without bothering to tell Docherty, did not pay off the loans.

The Court of Appeals for the Second Circuit in reversing Docherty's conviction, held that Docherty could not be guilty of conspiring to make false entries, because the entries in question were not "false" within the meaning of 18 U.S.C. § 1005. Pointing out that Docherty was the only person who had signed the notes, the court concluded that, taking into account the legal picture existing at the time Docherty executed the notes, the transactions were, in fact, ones in which Docherty, and Docherty alone, was liable to the bank. The court stated that, by recording those notes as the sole liabilities of Docherty, the entries accurately recorded transactions which actually occurred and, for that reason, they were not false.

Just like the entries involved in *Docherty*, the entries discussed herein recorded transactions which, when the legal picture existing at the time the transactions were made is taken into account, actually occurred. Therefore, these entries were not "false" within the meaning of 18 U.S.C. § 1005.

Perhaps most analogous to the instant case is an Arizona state court case, *Arizona v. Heron*, 94 Ariz. 81, 381 P.2d 764 (Sup. Ct. 1963). *Heron* involved an appeal by two defendants who were charged with violating an Arizona statute which prohibited the making of false entries in the books of a savings and loan association.

The scheme of the defendants, both of whom were officers of the savings and loan association in question, was undisputed. One of the defendants, James Heron, shortly before the end of

the year, deposited in the association certain checks drawn by him on insufficient funds in another bank and made payable to the association. Shortly after the end of the year Heron withdrew the money so that he could cover with the other bank the bad checks which he had deposited in the association. This was Heron's intended scheme all along, as it was his desire to project an inflated picture of the association's cash position at the end of the year.

The government contended that the entries made before the end of the year, which showed that the deposits were made unconditionally, were false because the defendants intended at the time the entries were made to withdraw the funds after the end of the year. The entries were false, argued the government because they were made solely for the purpose of creating a false image of the financial condition of the association.

The applicable Arizona statute was very similar to 18 U.S.C. § 1005. That Arizona statute, A.R.S. 10-193 (A.) 2, provided as follows:

> "It is unlawful for a director, officer or agent of a corporation or association to . . . (2) Defraud, destroy, alter, mutilate or falsify any books, papers, writings or securities belonging to such corporation or association, or make, or concur in making, any false entries or omit or concur in omitting to make any material entry, in a book of accounts or other record or document kept by the corporation or association, with intent to defraud."

At 381 P.2d 767, the court stated the issue to be:

> "Does the truthful entry of a fraudulent transaction constitute a false entry within the meaning of the statute?"

In response to the question thus formulated, the court stated at 386 P.2d 767:

> "Logic as well as the authorities requires that this question be answered in the negative."

Thus the court held that the entries were not "false" within the meaning of the statute. In reaching its determination of the issue, the court relied extensively and exclusively on federal cases construing 18 U.S.C. § 1005 and its predecessor provisions. In so relying on federal decisions, the court recognized that the policies underlying the federal statute were identical to those underlying the state statute which it was construing.

The court reasoned that, though the effect of the transactions was to defraud, the entries themselves were not false because they accurately recorded transactions—i.e., the deposits—which were, in fact, made. Indeed, the court noted that the failure to record the deposits on the association's books would have constituted the making of a false entry, because there would have been a failure to record what actually happened. In this regard the court stated at 381 P.2d 767:

> "Not to have made the entries in question would have been to commit the crime charged, since it was the duty of all concerned to see that the records spoke the exact truth. A recital on the books which speaks the truth cannot be a false entry. *If the entries were not false, it is hardly necessary to point out that the making of those entries with intent to deceive or defraud would not constitute an offense . . .*" (Emphasis added.)

The applicability to the instant case of *Heron* is obvious. The scheme participated in by Grissom and Hart was very similar to that involved in *Heron*. Grissom sold securities to Hart before the end of an accounting period subject to an oral, unenforceable understanding that the bank would repurchase the bonds from Hart after the end of the accounting period. (In the case of Counts Six and Twelve, Grissom purchased securities subject to

an oral, unenforceable understanding that Hart would buy them back later for the same price.) In *Heron* the defendants made an entry reflecting an unconditional deposit in the association with an undisclosed understanding that the funds so deposited would be withdrawn after the end of the year. In both *Heron* and the instant case the entries recorded transactions which, from the standpoint of the legal picture existing when the transactions took place, actually occurred. Just as the entries in *Heron* were not false, so also the entries discussed herein were not "false" within the meaning of 18 U.S.C. § 1005.

B. **Count Four.**

Count Four, which involved the Federal Land Bank bonds, charged as follows:

> "On or about June 14, 1971, in the Western District of Tennessee, the Defendants, William Robert Grissom, and Albert S. Hart, being aided, abetted, counseled and induced to act by each other, with intent to deceive the senior officers of the Union Planters National Bank of Memphis, the deposits of which were insured by the Federal Deposit Insurance Corporation, did wilfully and knowingly make and cause to be made in the books, reports and statements of said Bank, a false entry, that is, the said Defendants made and caused to be made an entry indicating that A. S. Hart and Company had agreed on June 14, 1971, to purchase and pay for on that date certain securities, to-wit, Federal Land Bank Bonds ($1,000,000.00 par value), whereas, in truth and fact, as the said Defendants then knew, A S. Hart had previously agreed to purchase and pay for the said securities on April 20, 1971, but had failed to pay for said securities when issued on April 20, 1971; in violation of Title 18, United States Code, Section 1005 and Section 2."

This count is discussed separately from those discussed in the immediately preceding Section, because it did not charge a failure to record a repurchase agreement.

Count Four arose out of events which occurred on June 15, 1971.[12] On that day Union Planters sold Hart the Federal Land Bank bonds for the one million dollar purchase price which he had previously agreed on April 8, 1971 to pay on April 20, 1971. This June 15th transaction was recorded as a sale by the bank to Hart made on June 15th.

The government contends that the June 15th entry was false because it failed to disclose Hart's pre-existing obligation to pay for the bonds. This contention is without merit.

Once again, let us, in determining if this entry was "false" within the meaning of 18 U.S.C. § 1005, ask (1) what transaction was recorded as having occurred on June 15th and (2) what transaction actually occurred on June 15th. If the answers to both questions are the same, then the entry was not false.

As noted above, the June 15th entry recorded that a sale by Union Planters to Hart was made on that date. We can see that this is exactly what happened on June 15th. On June 15th Union Planters did, in fact, sell the bonds to Hart. Thus, what was recorded as having occurred on June 15th actually did occur. For this reason, the June 15th entry was not "false" within the meaning of the statute.

What concerned the government about this transatcion was the fact that Hart had previously agreed to pay for and take delivery of the bonds on April 20th and then did not do so until June 15th. It is obvious that the defendants' misconduct, if any, occurred on April 20th, when the bank did not compel Hart to

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[12] The reference in the indictment to June 14, 1971 is a mistake.

honor the agreement he had made on April 8th.[13] However, this does not, and cannot, alter the fact that on the date charged a sale to Hart did actually take place and that the entry accurately recorded that sale. Because the June 15th entry recorded the transaction which actually occurred on that day, it was not "false" within the meaning of 18 U.S.C. § 1005.

C. **Count Two**

Count Two charged the defendants as follows:

> "On or about April 8, 1971, in the Western District of Tennessee, the Defendants, William Robert Grissom, and Albert S. Hart, being aided, abetted, counseled and induced to act by each other, with intent to deceive the senior officers of the Union Planters National Bank of Memphis, the deposits of which were insured by the Federal Deposit Insurance Corporation, did wilfully and knowingly make and cause to be made in the books, reports and statements of said Bank, a false entry, that is, the said Defendants made and caused to be made an entry indicating that A. S. Hart was the sole bidder on certain securities, to-wit, Federal Land Bank Bonds ($1,000,000.00 par value) to be issued April 20, 1971, whereas, in truth and fact, as the said Defendants then knew, A. S. Hart had only a Fifty (50%) per cent interest in said securities bid and the Defendant, William Robert Grissom, and Thomas W. Murrey, each had a Twenty-Five (25%) per cent interest in said securities bid; in violation of Title 18, United States Code, Section 1005 and Section 2."

[13] Indeed, the government charged in Count Three that a misapplication occurred from April 20, 1971 until June 15, 1971 as a result of the fact that Hart was able to delay for almost two months his payment for the bonds. However, the jury, undoubtedly taking into account the facts that during this period the bank was receiving a competitive rate of interest and that Hart ultimately did honor his obligation on June 15th by paying one million dollars for bonds which were then worth only $955,000, acquitted the defendants on this charge.

This count, like Count Four, did not deal with the failure to disclose a repurchase agreement, and, because its fact situation is somewhat different from the other counts, it is discussed separately.

Count Two, like Counts Four and Six, involved the Federal Land Bank bonds and arose out of events occurring on April 8, 1971. On that day Hart contracted to repurchase a block of one thousand of these bonds at the par value of one million dollars. A confirmation to this effect was prepared on April 8th, the confirmation showing that Hart would pay for and take delivery of the bonds on April 20, 1971.

On the same day Hart and Grissom entered into an oral partnership agreement. This agreement was really a limited joint venture in which they agreed to share equally the profits or losses made on this transaction during the life of the joint venture.[14]

The April 8th confirmation stated only that Hart had purchased the bonds from the bank. It did not disclose Grissom's agreement with Hart to share profits and losses and, for this reason, the April 8th confirmation was alleged to be a false entry.

As we have done in the case of the entries previously examined, we shall pose the two essential questions: (1) What transaction did the April 8th confirmation record as having occurred on that date and (2) what transaction actually occurred

[14] As noted earlier, at p. 13, n. 4, *supra*, the joint venture was terminable at the will of either party. As also noted at p. 13, Grissom, without Hart's knowledge, made an agreement with another individual, Tom Murrey, to share equally the profits or losses Grissom made on the bonds.

on April 8th. If the answers to these two questions are the same, the entry was not false.

The first question has been answered. The confirmation showed that on April 8th Hart, and Hart alone, contracted with the bank to pay one million dollars for the bonds. According to the confirmation, Hart was the only person liable to the bank for payment for the bonds.

Turning to the second question, we can see that what was recorded as having occurred on April 8th did in fact occur on that day, because Hart, the only person whose name appeared on the confirmation, was, in fact, the only person liable to the bank for payment for the bonds. Grissom was not liable to the bank for the simple reason that he had no agreement, written or oral, with the bank. Grissom and Hart agreed from the outset that Hart, and Hart alone, would be liable to the bank for payment and, indeed, it was only to Hart that the bank looked for payment. Thus, the entry, by recording the purchase as the sole liability of Hart, accurately depicted the transaction which actually occurred.

Of concern to the government was the fact that Grissom, with Hart's help, obtained an interest (by reason of his agreement with Hart) in a transaction to which the bank was a party. The proof showed that bank policy prohibited such dealings because of the potential conflict of interest inherent in such dealings. Thus, by participating with Hart in the joint venture, Grissom violated a bank policy. However, even if we assume further that the actions of Grissom and Hart were fraudulent, this still does not satisfy the requirements of 18 U.S.C. § 1005. Under that statute a crime is committed only if the pertinent entry states something which is untrue. In the instant case the entry accurately reflected the fact that Hart, and Hart alone, was liable to the bank for payment for the bonds. Even assuming *arguendo* that the entry was part of a fraudulent

scheme, it nevertheless stated what actually happened—that Hart was the only person obligated to pay the bank for the bonds. Therefore, the entry was not "false" within the meaning of 18 U.S.C. § 1005.

The situation presented in the instant case is quite similar to that presented in *United States v. Docherty*, 468 F.2d 989 (2nd Cir. 1972), discussed *supra* at pp. 39-41. In that case the defendant, Docherty, made loans with the bank and turned the proceeds over to his friend, a bank officer. The officer's interest in the transactions was not recorded on the bank's books, and the government contended that the failure to disclose the officer's interest constituted a false entry under 18 U.S.C. § 1005. The court, in an opinion by Judge Friendly, disagreed, holding that the entries were not false because they accurately showed that Docherty was the only party liable to the bank. The court, pointing out that the loans were Docherty's liabilities and that the bank would look solely to Docherty for payment, concluded that the entries accurately recorded the transactions which actually occurred.

Similarly, in the instant case, the April 8th entry, though it failed to disclose Grissom's agreement with Hart, nevertheless accurately depicted the bond purchase transaction as Hart's liability, and Hart's alone. In the same way, the *Docherty* entries, though they failed to disclose the arrangement made between Docherty and the bank officer, still accurately depicted the loans as Docherty's liability, and Docherty's alone. Just as the entries in *Docherty* were held not to be false because they accurately depicted the transactions which actually occured on the dates the entries were made, the April 8th entry in the instant case was, for the same reason, also not false.

D. Count One

Count One charged the defendants with conspiring to make false entries and to misapply the bank's funds. The entries

alleged to be false in Count One are the same as those which formed the basis of the previously discussed substantive counts. If those entries were not "false" within the meaning of 18 U.S.C. § 1005, thereby rendering invalid the defendants' convictions on the substantive counts, then it necessarily follows that the defendants cannot be guilty of conspiring to make false entries. *United States v. Docherty*, 468 F.2d 989, 992, discussed *supra* at pp. 39-41, 51-52.

E. **Conclusion**

In determining if an entry is "false" within the meaning of 18 U.S.C. § 1005, we must ask two essential questions: (1) What transactions did the entry record as having occurred and (2) what transaction actually occurred. If the answers to the two questions are the same, then the entry is not false. Thus, even if an entry is made with criminal intent, it is not "false" within the meaning of 18 U.S.C. § 1005, if it accurately records what actually took place on the day the entry was made. *Coffin v. United States*, 156 U.S. 432, 39 L.Ed. 481 (1894), *supra; Hayes v. United States*, 160 F. 101 (8th Cir. 1909), *supra; United States v. Docherty*, 468 F.2d 989 (2nd Cir. 1972), *supra;* and *Arizona v. Heron*, 94 Ariz. 81, 381 P.2d 764 (Sup. Ct. 1963), *supra.*

What is especially grievous to the Petitioner is the fact that this well settled principle is illustrated with abundant clarity in *Crenshaw v. United States*, 116 F.2d 737 (1940), a Sixth Circuit case cited in that Court's opinion of March 31, 1977 affirming the Petitioner's conviction. In that case, the defendant, President of a bank in Newbern, Tennessee, took three hundred dollars from a depositor and intentionally and willfully failed to deposit the money in the bank. He credited the depositor's pass book but did not credit the individual ledger, i.e., the bank record. Well over a year later the three hundred dollar discrepancy between the depositor's pass book and the bank's records was discovered.

The government contended that the entry in the individual ledger was false because it omitted a notation of the three hundred dollars received by its officer. Though recognizing the wrongful nature of the defendant's conduct, the Court correctly held that the entry was not false because it accurately recorded the amount of money which the depositor had on deposit when the entry was made. The Court thus stated at 116 F.2d 740:

> "The entry of $62.77 was not false; it was the exact truth. This was all the money Mrs. Hicks had on deposit on the date of the entry and appellant was entitled to a directed verdict on this count."

It is apparent that in *Crenshaw* the Sixth Circuit correctly recognized the principle that an entry, even when made with deceitful purpose, is not false when it accurately records the realities existing on the date the entry was made.

In this, the instant case, it is respectfully submitted that, accepting verbatim the facts stated in the Sixth Circuit's opinion of March 31st, the entries involved in the instant case accurately recorded the realities existing on the dates they were made and that, therefore, the entries were not "false" within the meaning of 18 U.S.C. § 1005.

The Sixth Circuit's decision affirming the Petitioner's conviction clearly constitutes a significant and unwarranted departure from well established decisions of this Court and the courts of the Sixth and other circuits. The construction placed on 18 U.S.C. § 1005 by the Sixth Circuit is clearly unprecedented. Accordingly, the petition for certiorari should be granted so that this Court can evaluate the wisdom of the Sixth Circuit's radical (and, in our opinion, unwise) departure from established precedent.

ISSUE II

Whether, in View of the Fact That the Defendants Cannot Be Guilty of Conspiring to Make False Entries, the Defendants' Conviction on Count One of Conspiring to Make False Entries and to Misapply Funds Is Valid?

In the discussion of Issue I we demonstrated that the subject bank entries were not "false" within the meaning of 18 U.S.C. § 1005. In that discussion, we showed that, because those entries were not false, the defendants could not be guilty on the substantive false entry counts. Additionally, we further showed that the defendants could not be guilty of conspiracy to make false entries. (See p. 52, *supra.*) The question that now arises is whether, assuming that the defendants could have been properly convicted on a count charging only conspiracy to misapply funds, the defendants' conviction on Count One, which charged conspiracy both to misapply *and* to make false entries, can be allowed to stand.

At the outset it should be pointed out that the situation facing us is not one which involves on the one hand a conviction on a count charging a conspiracy to commit a single substantive offense and on the other an acquittal on counts charging the commission of that substantive offense. Nor is the question presented here whether the government may, in one count, charge a conspiracy to commit two or more substantive offenses.[13] Instead, the question, as noted above, is the much narrower one of whether under the particular facts of this case a count charging a conspiracy to commit two substantive offenses is valid when the proof will support a conviction of conspiracy to commit only one of those substantive offenses.

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[13] It is well settled that one count may allege a single conspiracy to commit two or more substantive offenses. *Frohwerk v. United States*, 249 U.S. 204 (1919) and *Braverman v. United States*, 317 U.S. 49 (1942).

Significant to the determination required herein is the fact that the jury was instructed that in order to convict it was only necessary to find, *inter alia*, that one or more of the conspirators committed one overt act in furtherance of the conspiracy. Thus, the jury could have convicted the defendants on the basis of a conspiracy to violate § 1005 alone. Indeed, it is very likely that the jury did convict on the basis of a conspiracy to violate § 1005 alone. We say this because the jury acquitted the defendants on the substantive misapplication counts, even though the defendants admitted at the trial that they did the acts which formed the basis of those substantive counts. It is, we believe, very doubtful that the jury would have found the defendants guilty of conspiring to misapply and not guilty of the substantive offenses charging misapplication, in view of the defendants' admission that they committed the acts alleged to constitute misapplications. Logic would compel the conclusion that, as to the substantive offenses, the jury found the requisite intent to be lacking. It is also logical to conclude that the jury also found the requisite intent lacking with respect to the charge of conspiracy to misapply.

Because the defendants' conviction could have been—and undoubtedly was—based on a verdict which was impermissible, it should be set aside. In short, the defendants were more than likely convicted on proof insufficient to constitute the crime for which they were convicted.

The issue presented herein, at least insofar as we confine ourselves to facts similar to those surrounding the jury's verdict in this case, has not been decided in a reported case. The closest this issue came to a resolution was in *United States v. Docherty*, 368 F.2d 989 (2nd Cir. 1972), discussed *supra* at pp. 30 and 31. In that case, the defendant was appealing from a conviction of conspiracy to make false entries under 18 U.S.C. § 1005 and to misapply funds. After holding that the entries were not "false" within the meaning of 18 U.S.C. § 1005 and

that the defendant could therefore not be guilty of conspiracy to make false entries, the court noted:

> "Perhaps [the conviction on the conspiracy count] could not survive in any event because of the possibility that the jury could have convicted on the basis of a conspiracy to violate § 1005 alone . . ."
>
> 468 F.2d at 992, n.2

However, because the court further found that the proof did not support a conviction for conspiracy to misapply, it was unnecessary for the court to decide this question.[16]

It is respectfully submitted that this Court should, if it becomes necessary for it to decide the issue discussed herein, set aside the conviction on Count One.

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[16] It should also be noted that the defendant in *Docherty* had been convicted on four substantive counts of misapplication which were ultimately dismissed by the court along with the conspiracy count. Before ruling that the evidence did not support a conviction for misapplication, however, the court stated that the possibility that the conspiracy conviction was based on a conspiracy to violate § 1005 alone was "minimized" by the defendant's conviction on the four substantive misapplication counts. 468 F.2d 992, n.2. Thus, it was obvious that the court, by recognizing that the defendant had been convicted on four substantive counts of misapplication, had assessed as slight the possibility that the jury had in the conspiracy count convicted on the basis of the false entry statute alone. Of course, this fact pattern is quite distinguishable from that presented in the instant case, where the defendants were acquitted on all the substantive misapplication counts.

CONCLUSION

For the reasons stated herein, the Petitioner respectfully prays that this Petition for Writ of Certiorari be granted.

Respectfully submitted this 7th day of July, 1977.

B. C. CLIFTON

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Certificate of Service

I hereby certify that three copies of the foregoing Petition for Writ of Certiorari were mailed, with first class postage prepaid, to the Solicitor General, Department of Justice, Tenth and Pennsylvania Avenue, Northwest, Washington, D.C. 20530 and one copy to Glen Reid, Assistant United States Attorney, 10th Floor, Federal Building, Memphis, Tennessee 38103.

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APPENDIX

APPENDIX A

Nos. 76-2305, -2306

United States Court of Appeals
for the Sixth Circuit

United States of America, Plaintiff-Appellee, v. Albert S. Hart and William Robert Grissom, Defendants-Appellants.	Appeal from the United States District Court for the Western District of Tennessee, Western Division.

Decided and Filed March 31, 1977

Before: Celebrezze and Peck, Circuit Judges, and Feikens,* District Judge.

Feikens, District Judge. Defendants-Appellants Albert S. Hart (Hart) and William Robert Grissom (Grissom) were charged with and convicted of a conspiracy to make and to cause to be made false entries in a bank's (Union Planters National Bank of Memphis) books and to misapply and cause to be misapplied money and securities of the bank, in violation of Title 18, United States Code, Section 371 (Count I); they were also convicted of the substantive crimes of making and causing to be made false entries in the bank's books and aiding and abetting therein in violation of Title 18, United States Code, Sections 1005 and 2 (Counts II, IV, VI, VIII, X, VII and XIII).

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* Honorable John Feikens, United States District Judge for the Eastern District of Michigan, sitting by designation.

They were acquitted on seven substantive counts of wilful misapplication of funds and aiding and abetting therein (Counts I, II, V, VII, IX, XI and XIV). Hart was sentenced to periods of imprisonment of three months and probation of eighteen months, and Grissom was sentenced to periods of imprisonment of six months and probation of twenty-four months.

They now appeal, claiming that the government's evidence was insufficient to support their convictions and that the entries made were not false as a matter of law. They also contend that the trial judge erred in accepting opinion testimony as to the falsity of the entries, in limiting verbal exchanges between them and their counsel during trial, and in charging the jury on the meaning of "intent to deceive" and "intent to defraud."

Grissom was vice-president of the bank in charge of the investment division. Hart was the principal owner of A. S. Hart and Company, an investment company dealing in municipal and government securities in the Memphis area. They were involved in two types of transactions, joint ventures in "when issued" trading and "parking" transactions. The investment division of the bank supplied the means.

"When issued" trading refers to the purchase or sale of government bonds prior to their date of issuance by the government. Typically, the government will announce a future date for the issuance of its securities, and investors will then bid on the rights to purchase a share of the issue. Prior to the issue date, contracts for purchase of the bonds may be made above or below their par value, with the buyer only obligated to pay for the bonds "when issued."

On eleven occasions between March, 1971 and April, 1973, Grissom and Hart formed joint ventures for the purpose of

buying when issued securities from the bank, under agreements to share the profits and losses equally. The bank had a policy against self-dealing by its employees, and Grissom's interest in these purchases was therefore a secret one. The purchases were recorded in the bank's records as sales to Hart only.

Hart and Grissom were charged in the indictment with only one of these joint ventures; it concerned the purchase of when issued Federal Land Bank Bonds, with an issue date of April 20, 1971. Hart and Grissom agreed on or about April 8, 1971, to purchase $1,000,000 of these bonds from the bank; the order was placed solely in Hart's name. By April 20, the bonds had declined in value by $15,000. Hart did not pay the bank for the bonds at that time, as he was obligated to do; instead, Grissom had the bank purchase them for $1,000,000 and carry them in the bank's trading account. Hart's original purchase order was subsequently lost or misplaced.

On June 15, 1971, Hart borrowed $1,000,000 from the Houston National Bank and used these funds to purchase the bonds from Grissom's bank, pledging the bonds as security for the loan. June 15 was recorded as the initial or original purchase date on the bonds, to conceal Hart's earlier commitment to pay the purchase price by April 20, 1971. The loan expired in 30 days, and so on July 15, Grissom arranged for his bank to purchase the bonds back from Hart for $965,000; their market value on that date was $951,250. This transaction was recorded as a final sale to Hart only. Left undisclosed in the bank's records were Grissom's interest in this sale to the bank and Grissom's commitment, on behalf of the bank, to resell the bonds to Hart at any time for the same price. On October 19, 1971, the bonds were resold to Hart for $965,000, who then sold them back to the bank that same day for $984,375; Grissom then immediately had the bank sell the bonds to another investor for $985,312.50, the prevailing market price.

Grissom and Hart did not realize a profit on this venture, though they were more successful on other occasions. On March 2, 1974, Hart, Grissom and Thomas Gaines, another employee in the bank's investment division, jointly contracted to purchase $500,000 of when issued government securities from the bank. Upon their resale to the bank on March 5, 1971, each realized a profit of $833.33. Grissom and Hart were paid their shares in checks issued to "Mrs. Grissom" and "Mrs. Gaines." Five of their other joint ventures from 1971 through 1973 also realized profits, totaling $36,937.50.

A "parking" transaction refers to a procedure by which the bank, through Grissom, sold certain securities to Hart at the end of one quarterly period subject to an undisclosed agreement to repurchase them at the beginning of the next quarterly period. The purpose of this arrangement was to avoid compliance with the regulations of the Comptroller of the Currency, which require all securities in a bank's trading account to be revalued on a quarterly basis and reported at the lesser of cost or prevailing market value. 12 C.F.R. § 18.6(c). When Grissom, as head of the investment division, did not wish to report a devaluation or loss on certain securities, he would "park" them with Hart during the reporting period at a price equal to their original cost to the bank. The transaction would be recorded as a "final" sale to Hart, and Grissom would not record his further agreement with Hart to repurchase the securities after the reporting period for the same price irrespective of their market value at the time of repurchase.

Grissom and Hart were indicted for parking transactions for the three reporting period from December of 1972 to June, 1973. In each instance, the transactions were recorded as final sales to Hart, though the sales were actually subject to an undisclosed agreement to repurchase. The effect in each case was to inflate the profits of the investment division and to conceal losses on the parked securities. Subsequent to the

last series of parking transactions in June of 1973, the practice was discovered by bank management, and Grissom was discharged.

Counts I (conspiracy), overt acts one (1) through nine (9) inclusive, II, IV, and VI refer to the when issued trading transactions, and Counts I, overt acts ten (10 through twenty-one (21), VIII, X, XII and XIII refer to the parking transactions.

The record as to these counts discloses ample evidence from which the guilt of the defendants can be found. *U.S. v. Wolfenbarger*, 426 F.2d 992 (6th Cir. 1970). The crime of conspiracy is supported by substantial evidence establishing an unlawful agreement between the defendants, membership of both in the conspiracy, and the carrying out of one or more of the overt acts, charging the making of the entries in the books of the bank, in furtherance of the unlawful agreement. *U.S. v. Williams*, 503 F.2d 50, 54 (6th Cir. 1974); *U.S. v. Bostic*, 480 F.2d 965, 968 (6th Cir. 1973). Defendants do not deny the happening of the essential facts. They deny only their intent to deceive in the various when issued trading and "parking" transactions in which they engaged; hence they argue there were no false entries made or caused to be made by them in the books of the bank.

The record indicates otherwise. There was proof of mutliple "when issued" trading transactions in which the entries in the books of the bank did not disclose Grissom's interest, and there were several parking transactions in which the sales were recorded as "final" to Hart when in fact Grissom, for the bank, had agreed to repurchase the securities involved at the sale price to Hart. The jury could and did find that the entries in the books of the bank which did not disclose Grissom's interest in the trading transactions or the real nature of Hart's interests in the parking transactions were false. *U.S.*

v. Bevans, 496 F.2d 494, 498 (8th Cir. 1974); *U.S. v. Mayr*, 487 F.2d 67, 69 (5th Cir. 1973). There was ample evidence before the jury from which they could and in all likelihood did conclude that the various transactions could not have been completed had their real nature been revealed *Crenshaw v. U.S.*, 116 F.2d 737, 739 (6th Cir. 1940). Under appropriate instructions the jury had evidence from which they could find that this conduct was intentional and that its purpose was to deceive the bank's officers and the Comptroller of the Currency and to advance the personal interests of the defendants. *King v. U.S.*, 249 F.2d 35 (6th Cir. 1957); *House v. U.S.*, 78 F.2d 296 (6th Cir. 1935); *Crenshaw v. U.S., supra.*

The remaining contentions of the defendants are equally without merit. The jury was properly instructed and only they could resolve issues of credibility. No rights of the defendants were violated in any limitation that might have been imposed upon the defendants during trial in their communications with their counsel, nor did any abuse of discretion occur in this regard.

Accordingly, the judgment of the District Court is affirmed.

APPENDIX B

Nos. 76-2305,-2306

United States Court of Appeals
For the Sixth Circuit

United States of America,
Plaintiff-Appellee,

v.

Albert S. Hart and William Robert Grissom,
Defendants-Appellants.

ORDER

(Filed May 19, 1977)

Before: CELEBREZZE and PECK, Circuit Judges, and FEIKENS,* District Judge.

In this case Defendants-Appellants, Albert S. Hart and William Robert Grissom, have filed a petition for a rehearing and have suggested that it be considered by the Court en banc.

No active judge of this Court having requested a rehearing en banc,

It Is Ordered that the suggestion for a rehearing en banc be and it is hereby denied;

The matter of the petition for rehearing having been referred to the panel, and the matters therein, including the cases to

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* Honorable John Feikens, United States District Judge for the Eastern District of Michigan, sitting by designation.

which Defendants-Appellants have specifically alluded, having again been carefully considered and not found to be applicable to this matter,

It Is Ordered that the petition for a rehearing be and it is hereby denied.

ENTERED BY ORDER OF THE COURT

/s/ JOHN P. HEHMAN
Clerk

APPENDIX C

In the United States District Court
For the Western District of Tennessee

United States of America,	Cr. No. CR-75-61
vs.	[18 U.S.C., § 2; 18 U.S.C., § 371; 18 U.S.C., § 656 and 18 U.S.C., § 1095]
William Robert Grissom; Albert S. Hart.	

INDICTMENT

(Filed April 17, 1975)

The Grand Jury Charges:

COUNT I

From a point in time prior to March, 1971, the exact date being to the Grand Jury unknown, and continuing thereafter up to and until September, 1973, in the Western District of Tennessee, and elsewhere, the Defendants, William Robrt Grissom, and Albert S. Hart, unlawfully and knowingly did combine, conspire, confederate and agree together with each other, with Margaret Colucci, Thomas F. Gaines, III, Thomas W. Murrey and John Robert Meadors, III, named herein as Co-Conspirators but not as Defendants herein, and with divers other persons to the Grand Jury unknown, to commit the following offenses against the United States:

1. To wilfully and knowingly misapply and cause to be misapplied the moneys, funds, credits and securities of the Union Planters National Bank of Memphis, the deposits of which were

insured by the Federal Deposit Insurance Corporation, in violation of Title 18, United States Code, Section 656 and Section 2.

2. To make and cause to be made false entries in the books, reports and statements of the Union Planters National Bank of Memphis, the deposits of which were insured by the Federal Deposit Insurance Corporation, with intent to deceive the officers of said Bank and the Comptroller of the Currency, in violation of Title 18, United States Code, Section 1005 and Section 2.

All in violation of Title 18, United States Code, Section 371.

At all times material herein, the Defendant, William Robert Grissom, was a Vice President of the Union Planters National Bank of Memphis, in charge of the Investment Division of said Bank, and the Defendant, Albert S. Hart, usually known as Bert Hart, was Chairman of the Board of A. S. Hart and Company, Memphis, Tennessee.

It was a part of the conspiracy for the Defendant, William Robert Grissom, to utilize his official position with the Union Planters National Bank of Memphis to conceal his interest, and the interests of others, in securities transactions between the Union Planters National Bank of Memphis and A. S. Hart and Company, and further, to utilize his official position with the Union Planters National Bank of Memphis to improperly accomodate A. S. Hart and A. S. Hart and Company, by misapplying the moneys, funds, credits and securities of the Union Planters National Bank of Memphis in securities transactions. It was a further part of the conspiracy for the Defendant, Albert S. Hart, to permit the Defendant, William Robert Grissom, and others, to participate in securities transactions between the Union Planters National Bank of Memphis and A. S. Hart and Company, without disclosing to the Union Planters National Bank of Memphis the identity of all participants, and

further, to aid and assist the Defendant, William Robert Grissom, in concealing from the officers of the Union Planters National Bank of Memphis and the Comptroller of the Currency losses sustained in the Investment Division of said Bank.

OVERT ACTS

In furtherance of the conspiracy, and to effect the objects thereof, the Defendants performed and caused to be performed, in the Western District of Tennessee, and elsewhere, the following Overt Acts, among others:

1. On or about April 8, 1971, the Defendants, William Robert Grissom and Albert S. Hart, and Thomas W. Murrey, agreed to enter into a joint venture involving speculation in the securities market.

2. On or about April 8, 1971, the Defendants, William Robert Grissom and Albert S. Hart, caused an order to be placed with the Union Planters National Bank of Memphis for Federal Land Bank Bonds having a par value of $1,000,000.00, to be purchased and paid for on April 20, 1971, by A. S. Hart at par value.

3. From on or about April 20, 1971, to on or about June 14, 1971, the Defendant, William Robert Grissom and Albert S. Hart, caused moneys, funds and credits of the Union Planters National Bank of Memphis to be used to carry the said Federal Land Bank Bonds previously ordered by A. S. Hart, when A. S. Hart failed to pay for said bonds on April 20, 1971.

4. On or about June 14, 1971, the Defendant, William Robert Grissom, caused entries to be made in the books, reports and statements of the Union Planters National Bank of Memphis indicating that said Federal Land Bank Bonds had been sold on June 14, 1971, to the Houston National Bank for the account

of A. S. Hart and Company, for the principal amount of $1,000,000.00.

5. On or about July 14, 1971, the Defendant, William Robert Grissom, caused the Union Planters National Bank of Memphis to purchase from A. S. Hart and Company, the said Federal Land Bank Bonds having a par value of $1,000,000.00, for the principal amount of $965,000.00, when the market value of the principal of said bonds was considerably less than $965,000.00.

6. On or about July 14, 1971, the Defendant, William Robert Grissom, caused the foregoing purchase alleged in Paragraph Number 5 hereinabove to be recorded in the books, reports and statements of the Union Planters National Bank of Memphis as a final purchase by the said Bank from A. S. Hart and Company.

7. On or about October 19, 1971, the Defendant, William Robert Grissom, caused the Union Planters National Bank of Memphis to sell the said Federal Land Bank Bonds, having a par value of $1,000,000.00, to Bert Hart for the principal amount of $965,000.00, when the market value of the principal for said bonds was approximately $984,375.00.

8. On or about October 19, 1971, the Defendant, William Robert Grissom, caused the Union Planters National Bank of Memphis to purchase the said Federal Land Bank Bonds having a par value of $1,000,000.00, from Bert Hart for the principal amount of $984,375.00.

9. On or about October 20, 1971, the Defendant, William Robert Grissom, caused a check to be issued by the Union Planters National Bank of Memphis, payable to the order of "Bert Hart", in the amount of $19,375.00.

10. On or about December 28, 1972, the Defendants, William Robert Grissom and Albert S. Hart, caused securities

owned by the Union Planters National Bank of Memphis, to-wit, Pittston, Inc. convertible debentures ($150,000.00 par value) and Louisiana Land Offshore Exploration Company, Inc. Units ($400,000.00 par value) to be sold to A. S. Hart and Company for the total principal amount of approximately $493,-000.00, at a time when the total market value for the principal for said securities was considerably less than $493,000.00.

11. On or about December 28, 1972, the Defendant, William Robert Grissom, caused entries to be made in the books, reports and statements of the Union Planters National Bank of Memphis indicating that the foregoing sales alleged in Paragraph Number 10 hereinabove were final sales, improperly taking said securities off the books, reports and statements of said Bank, thereby precluding the writing done of said securities to market value.

12. On or about January 12, 1973, the Defendants, William Robert Grissom and Albert S. Hart, caused securities owned by A. S. Hart and Company, to-wit, those same securities previously owned by the Union Planters National Bank of Memphis and sold to A. S. Hart and Company, as alleged in Paragraph Number 10 hereinabove, to be sold to the Union Planters National Bank of Memphis for the total principal amount of approximately $494,375.00, at a time when the total market value for the principal for said securities was considerably less than $494,375.00.

13. On or about March 28, 1973, the Defendants, William Robert Grissom and Albert S. Hart, caused securities owned by the Union Planters National Bank of Memphis, to-wit, Ford Motor Credit Company convertible debentures ($300,000.00 par value), Pittston, Inc., convertible debentures ($150,000.00 par value) and Louisiana Land Offshore Exploration Company, Inc. Units ($300,000.00 par value) to be sold to A. S. Hart and Company for the total principal amount of approximately

$700,500.00, at a time when the total market value for the principal for said securities was considerably less than $700,-500.00.

14. On or about March 28, 1973, the Defendant, William Robert Grissom, caused entries to be made in the books, reports and statements of the Union Planters National Bank of Memphis indicating that the foregoing sales alleged in Paragraph Number 13 hereinabove were final sales, improperly taking said securities off the books, reports and statements of said Bank, thereby precluding the writing down of said securities to market value.

15. On or about April 3, 1973, the Defendants, William Robert Grissom and Albert S. Hart, caused securities owned by A. S. Hart and Company, to-wit, those same securities previously owned by the Union Planters National Bank of Memphis and sold to A. S. Hart and Company, as alleged in Paragraph Number 13 hereinabove, to be sold to the Union Planters National Bank of Memphis for the total principal amount of approximately $700,500.00, at a time when the total market value for the principal for said securities was considerably less than $700,500.00.

16. On or about June 27, 1973, the Defendants, William Robert Grissom and Albert S. Hart, caused securities owned by A. S. Hart and Company, to-wit, Federal National Mortgage Association debentures ($1,000,000.00 par value) to be sold to the Union Planters National Bank of Memphis for the principal amount of approximately $951,000.00.

17. On or about June 27, 1973, the Defendant, William Robert Grissom, caused entries to be made in the books, repotrs and statements of the Union Planters National Bank of Memphis indicating that the foregoing purchase alleged in Paragraph Number 16 hereinabove was a final purchase.

18. On or about July 5, 1973, the Defendants, William Robert Grissom and Albert S. Hart, caused securities owned by

the Union Planters National Bank of Memphis, to-wit, those same securities previously owned by A. S. Hart and Company and sold to the Union Planters National Bank of Memphis, as alleged in Paragraph Number 16 hereinabove, to be sold to A. S. Hart and Company, for the principal amount of approximately $951,000.00.

19. On or about June 27, 1973, the Defendants, William Robert Grissom and Albert S. Hart, caused securities owned by the Union Planters National Bank of Memphis, to-wit, Ford Motor Credit Company convertible debentures ($700,000.00 par value) to be sold to A. S. Hart and Company for the principal amount of approximately $689,500.00, at a time when the market value for the principal for said securities was considerably less than $689,500.00.

20. On or about June 27, 1973, the Defendant, William Robert Grissom, caused entries to be made in the books, reports and statements of the Union Planters National Bank of Memphis indicating that the foregoing sale alleged in Paragraph Number 19 hereinabove was a final sale, improperly taking said securities off the books, reports and statements of said Bank, thereby precluding the writing down of said securities to market value.

21. On or about July 5, 1973, the Defendants, William Robert Grissom and Albert S. Hart, caused securities owned by A. S. Hart and Company, to-wit, those same securities previously owned by the Union Planters National Bank of Memphis and sold to A. S. Hart and Company, as alleged in Paragraph Number 19 hereinabove, to be sold to Union Planters National Bank of Memphis for the prinicpal amount of approximately $689,-500.00, at a time when the market value for the principal amount for said securities was considerably less than $689,-500.00.

[nm $10,000 or nm 5 yrs., or both]

COUNT II

On or about April 8, 1971, in the Western District of Tennessee, the Defendants, William Robert Grissom, and Albert S. Hart, being aided, abetted, counseled and induced to act by each other, with intent to deceive the senior officers of the Union Planters National Bank of Memphis, the deposits of which were insured by the Federal Deposit Insurance Corporation, did wilfully and knowingly make and cause to be made in the books, reports and statements of said Bank, a false entry, that is, the said Defendants made and caused to be made an entry indicating that A. S. Hart was the sole bidder on certain securities, to-wit, Federal Land Bank Bonds ($1,000,000.00 par value) to be issued April 20, 1971, whereas, in truth and fact, as the said Defendants then knew, A. S. Hart had only a Fifty (50%) per cent interest in said securities bid and the Defendant, William Robert Grissom, and Thomas W. Murrey, each had a Twenty-Five (25%) per cent interest in said securities bid; in violation of Title 18, United States Code, Section 1005 and Section 2.

[nm $5,000 or nm 5 yrs., or both]

COUNT III

From on or about April 20, 1971, to on or about June 14, 1971, in the Western District of Tennessee, the Defendant, William Robert Grissom, being an officer, that is, Vice President, of the Union Planters National Bank of Memphis, the deposits of which were insured by the Federal Deposit Insurance Corporation, and being aided, abetted, counseled and induced to act by the Defendant, Albert S. Hart, with intent to defraud the said Bank, did wilfully and knowingly misapply and cause to be misapplied the moneys, funds and credits of the said Bank by causing approximately $1,000,000.00, of the

moneys, funds and credits of the said Bank to be used to purchase and hold as an investment of said Bank certain securities, to-wit, Federal Land Bank Bonds ($1,000,000.00 par value), which said securities A. S. Hart had agreed to purchase and pay for on April 20, 1971, in violation of Title 18, United States Code, Section 656 and Section 2.

[nm $5,000 or nm 5 yrs., or both]

COUNT IV

On or about June 14, 1971, in the Western District of Tennessee, the Defendants, William Robert Grissom, and Albert S. Hart, being aided, abetted, counseled and induced to act by each other, with intent to deceive the senior officers of the Union Planters National Bank of Memphis, the deposits of which were insured by the Federal Deposit Insurance Corporation, did wilfully and knowingly make and cause to be made in the books, reports and statements of said Bank, a false entry, that is, the said Defendants made and caused to be made an entry indicating that A. S. Hart and Company had agreed on June 14, 1971, to purchase and pay for on that date certain securities, to-wit, Federal Land Bank Bonds ($1,000,000.00 par value), whereas, in truth and fact, as the said Defendants then knew, A. S. Hart had previously agreed to purchase and pay for the said securities on April 20, 1971, but had failed to pay for said securities when issued on April 20, 1971; in violation of Title 18, United States Code, Section 1005 and Section 2.

[nm $5,000 or nm 5 yrs., or both]

COUNT V

On or about July 14, 1971, in the Western District of Tennessee, the Defendant, William Robert Grissom, being an officer, that is, Vice President, of the Union Planters National

Bank of Memphis, the deposits of which were insured by the Federal Deposit Insurance Corporation, and being aided, abetted, counseled and induced to act by the Defendant, Albert S. Hart, with intent to defraud the said Bank, did wilfully and knowingly misapply and cause to be misapplied the moneys, funds and credits of the said Bank by causing certain securities, to-wit, Federal Land Bank Bonds ($1,000,000.00 par value), to be purchased by the Union Planters National Bank of Memphis from A. S. Hart and Company, for the principal amount of approximately $965,000.00, at a time when the said Defendants knew that the market value for the principal for said Bonds was considerably less than $965,000.00; in violation of Title 18, United States Code, Section 656 and Section 2.

[nm $5,000 or nm 5 yrs., or both]

COUNT VI

On or about July 14, 1971, in the Western District of Tennessee, the Defendants, William Robert Grissom and Albert S. Hart, being aided, abetted, counseled and induced to act by each other, with intent to deceive the senior officers of the Union Planters National Bank of Memphis, the deposits of which were insured by the Federal Deposit Insurance Corporation, did wilfully and knowingly make and cause to be made in the books, reports and statements of the said Bank, a false entry, that is, the said Defendants made and caused to be made an entry indicating that the sale to the said Bank by A. S. Hart and Company of certain securities, to-wit, Federal Land Bank Bonds ($1,000,000.00 par value) for the principal amount of $965,000.00, was a final sale, whereas, in truth and fact, as the said Defendants then knew, the said sale was made pursuant to an unwritten re-purchase agreement whereby Bert Hart could re-purchase said securities from the said Bank for the principal amount of $965,000.00 regardless of the current market value

for said securities; in violation of Title 18, United States Code, Section 1005 and Section 2.

[nm $5,000 or nm 5 yrs., or both]

COUNT VII

On or about October 19, 1971, in the Western District of Tennessee, the Defendant, William Robert Grissom, being an officer, that is, Vice President, of the Union Planters National Bank of Memphis, the deposits of which were insured by the Federal Deposit Insurance Corporation, and being aided, abetted, counseled and induced to act by the Defendant, Albert S. Hart, with intent to defraud the said Bank, did wilfully and knowingly misapply and cause to be misapplied securities entrusted to the care of said Bank, to-wit, Federal Land Bank Bonds ($1,000,000.00 par value), by causing said securities to be sold by the said Bank to Bert Hart for the principal amount of approximately $965,000.00 at a time when the market value for the principal for said securities was considerably more than $965,000.00; in violation of Title 18, United States Code, Section 656 and Section 2.

[nm $5,000 or nm 5 yrs., or both]

COUNT VIII

On or about December 28, 1972, in the Western District of Tennessee, the Defendants, William Robert Grissom and Albert S. Hart, being aided, abetted, counseled and induced to act by each other, with intent to deceive the senior officers of the Union Planters National Bank of Memphis, the deposits of which were insured by the Federal Deposit Insurance Corporation, and with intent to deceive the Comptroller of the Currency, did wilfully and knowingly made and cause to be

made in the books, reports and statements of the said Bank a false entry, that is, the said Defendants made and caused to be made an entry indicating that the sale of certain securities, to-wit, Pittston, Inc., convertible debentures ($150,000.00) par value) and Louisiana Land Offshore Exploration Company, Inc., Units ($400,000.00 par value) by the said Bank to A. S. Hart and Company was a final sale, whereas, in truth and fact, as the said Defendants then knew, the said sale was not a final sale; in violation of Title 18, United States Code, Section 1005 and Section 2.

[nm $5,000 or nm 5 yrs., or both]

COUNT IX

On or about January 12, 1973, in the Western District of Tennessee, the Defendant, William Robert Grissom, being an officer, that is, Vice President of the Union Planters National Bank of Memphis, the deposits of which were insured by the Federal Deposit Insurance Corporation, and being aided, abetted, counseled and induced to act by the Defendant, Albert S. Hart, with intent to defraud the said Bank, did wilfully and knowingly misapply and cause to be misapplied the moneys, funds and credits of the said Bank, by causing the said Bank to purchase from A. S. Hart and Company certain securities, to-wit, Pittston, Inc., convertible debentures ($150,000.00 par value) and Louisiana Land Offshore Exploration Company, Inc. Units ($400,000.00 par value), for the total principal amount of $494,375.00, when the current market value for the total principal for said securities was considerably less than $494,375.00; in violation of Title 18, United States Code, Section 656 and Section 2.

[nm $5,000 or nm 5 yrs., or both]

COUNT X

On or about March 28, 1973, in the Western District of Tennessee, the Defendants, William Robert Grissom, and Albert S. Hart, being aided, abetted, counseled and induced to act by each other, with intent to deceive the senior officers of the Union Planters National Bank of Memphis, the deposits of which were insured by the Federal Deposit Insurance Corporation, and with intent to deceive the Comptroller of the Currency, did wilfully and knowingly make and cause to be made in the books, reports and statements of the said Bank a false entry, that is, the said Defendants made and caused to be made an entry indicating that the sale of certain securities, to-wit, Ford Motor Credit Company convertible debentures ($300,000.00 par value), Pittston, Inc. convertible debentures ($150,000.00 par value), and Louisiana Land Offshore Exploration Company, Inc. Units ($300,000.00 par value), by the said Bank to A. S. Hart and Company was a final sale, whereas, in truth and fact, as the said Defendants then knew, the said sale was not a final sale; in violation of Title 18, United States Code, Section 1005 and Section 2.

[nm $5,000 or nm 5 yrs., or both]

COUNT XI

On or about April 3, 1973, in the Western District of Tennessee, the Defendant, William Robert Grissom, being an officer, that is, Vice President, of the Union Planters National Bank of Memphis, the deposits of which were insured by the Federal Deposit Insurance Corporation, and being aided, abetted, counseled and induced to act by the Defendant, Albert S. Hart, with intent to defraud the said Bank, did wilfully and knowingly misapply and cause to be misapplied the moneys, funds and credits of the said Bank, by causing the

said Bank to purchase from A. S. Hart and Company certain securities, to-wit, Ford Motor Credit Company convertible debentures ($300,000.00 par value), Pittston, Inc. convertible debentures ($150,000.00 par value), and Louisiana Land Offshore Exploration Company, Inc. Units ($300,000.00 par value), for the total principal amount of $700,500.00, when the current market value for the total principal said securities was considerably less than $700,500.00; in violation of Title 18, United States Code, Section 656 and Section 2.

[nm $5,000 or nm 5 yrs., or both]

COUNT XII

On or about June 27, 1973, in the Western District of Tennessee, the Defendants William Robert Grissom and Albert S. Hart, being aided, abetted, counseled and induced to act by each other, with intent to deceive the senior officers of the Union Planters National Bank of Memphis, the deposits of which were insured by the Federal Deposit Insurance Corporation, and with intent to deceive the Comptroller of the Currency, did willfully and knowingly make and cause to be made in the books, reports and statements of the said Bank a false entry, that is, the said Defendants made and caused to be made an entry indicating that the purchase of certain securities, to-wit, Federal National Mortgage Association debentures ($1,000,000.00 par value), by the said Bank from A. S. Hart and Company was a final purchase, whereas, in truth and fact, as the said Defendants then knew, the said purchase was not a final purchase; in violation of Title 18, United States Code, Section 1005 and Section 2.

[nm $5,000 or nm 5 yrs., or both]

COUNT XIII

On or about June 27, 1973, in the Western District of Tennessee, the Defendants, William Robert Grissom, and Albert S. Hart, being aided, abetted, counseled and induced to act by each other, with intent to deceive the senior officers of the Union Planters National Bank of Memphis, the deposits of which were insured by the Federal Deposit Insurance Corporation, and with intent to deceive the Comptroller of the Currency, did wilfully and knowingly make and cause to be made in the books, reports and statements of the said Bank a false entry, that is, the said Defendants made and caused to be made an entry indicating that the sale of certain securities, to-wit, Ford Motor Credit Company convertible debentures ($700,000.00 par value), by the said Bank to A. S. Hart and Company was a final sale, whereas, in truth and fact, as the said Defendants then knew, the said sale was not a final sale; in violation of Title 18, United States Code, Section 1005 and Section 2.

[nm $5,000 or nm 5 yrs., or both]

COUNT XIV

On or about July 5, 1973, in the Western District of Tennessee, the Defendant, William Robert Grissom, being an officer, that is, Vice President, of the Union Planters National Bank of Memphis, the deposits of which were insured by the Federal Deposit Insurance Corporation, and being aided, abetted, counseled and induced to act by the Defendant, Albert S. Hart, with intent to defraud the said Bank, did wilfully and knowingly misapply and cause to be misapplied the moneys, funds and credits of the said Bank, by causing the said Bank to purchase from A. S. Hart and Company certain securities, to-wit, Ford Motor Credit Company convertible debentures

($700,000.00 par value), for the principal amount of $689,-500.00, when the current market value for the principal for said securities was considerably less than $689,500.00; in violation of Title 18, United States Code, Section 656 and Section 2.

[nm $5,000 or nm 5 yrs., or both]

A True Bill:

/s/ HERSHEL E. McELRAY
Foreman

Dated: April 14, 1975
/s/ THOMAS F. TURLEY, JR.
United States Attorney

APPENDIX D

RECEIPT

BOND DEPARTMENT
UNION PLANTERS NATIONAL BANK
P. O. BOX 387 • MEMPHIS, TENN. 38101

AC 901-523-2[illegible]
TWX 901-278-[illegible]

A.S. Hart & Company
Memphis, Bank Bldg.
44 N. Second St.
Memphis, Tx 38103

ACCOUNT NO.	AS PRINCIPAL / AGENT	TRADE DATE	SETTLEMENT DATE
S 01-050-1255	WE HAVE SOLD TO OR FOR YOU	6/10/71	6/15/71

PAR VALUE	SECURITY	PRICE
1,000,000	Fed. Land Banks, Bonds 5.30% Due 10/21/74	100

PRINCIPAL	INTEREST PERIOD	INTEREST	SERVICE CHARGE	TOTAL
1,000,000.00	4/20 to 6/15	8,097.22		1,008,097.22

DELIVERY INSTRUCTIONS

Charge acct
h.f

DATE_____

ACKNOWLEDGEMENT IS HEREBY MADE OF THE ABOVE DESCRIBED SECURITIES, NUMBERS, DENOMINATIONS AND MATURITIES AS LISTED, WITH CURRENT AND SUBSEQUENT MATURING COUPONS ATTACHED

D/C to Checking Acct of
Treasurer's Office
of U.S. State

APPENDIX E

NAME OF BOND FEDERAL LAND BANKS — RATE 5.30 %

PURPOSE Bonds — DATED 4-20-71

REMARKS: — MATURITY 10-21-74

INTEREST PAYABLE — PAYABLE AT

SHEET 1 . A

LOCATION

BASE PROFIT 977.50
PROFIT 468.75

DATE	MATURITY	SOLD TO OR PURCHASED FROM	PAR VALUE DEBIT	PAR VALUE CREDIT	PAR VALUE BALANCE	BOOK VALUE DEBIT	BOOK VALUE CREDIT	BOOK VALUE BALANCE
		LEFTWICH ROSS CRISLER	35,000.00		35,000.00 T	35,000.00		
		BULLINGTON SCHAS	35,000.00		70,000.00 T	35,000.00		
		HERMAN BENSDORF	60,000.00		130,000.00 T	60,000.00		
		DISCOUNT CORP OF NY	3,000,000.00		3,130,000.00 T	3,000,000.00		
		N Y HANSEATIC CORP	200,000.00		3,330,000.00 T	198,375.00		
		GLENN GL BROWNE	380,000.00		3,710,000.00 T	379,240.00		
		HARRIS TRUST & SAV	500,000.00		4,210,000.00 T	496,875.00		
		CONTINENTALL ILL	50,000.00		4,260,000.00 T	49,562.50		
		BANK OF AMERICA	200,000.00		4,460,000.00 T	200,000.00		
		FIRST NATL CITY BK	500,000.00		4,960,000.00 T	500,000.00		
		N Y HANSEATIC CORP	250,000.00		5,210,000.00 T	250,000.00		
		MORGAN GUARANTY TRUST	250,000.00		5,460,000.00 T	250,000.00		
		SALOMON BORS	500,000.00		5,960,000.00 T	500,000.00		
		M A SAUNDERS	60,000.00		6,020,000.00 T	60,000.00		
		LEADER FEDERAL		2,000,000.00	4,020,000.00 T		2,000,000.00	
		FIRST ST BK		50,000.00	3,970,000.00 T		49,593.75	
		MILAN BANKING CO		200,000.00	3,770,000.00 T		199,000.00	
		BK OF CLARKSDALE		1,000,000.00	2,770,000.00 T		1,000,000.00	
		FIRST NATL BK		500,000.00	2,270,000.00 T		500,000.00	
		BANK OF LELAND		100,000.00	2,170,000.00 T		100,000.00	
		HAMILTON NATL BK		200,000.00	1,970,000.00 T		200,000.00	1,965,458.75
APR 22 71		FIRST NTL BK CHICAGO		970,000.00	1,000,000.00 T		954,843.75	1,010,615.00
MAY 19 71		POSTED FROM FNMA 6.10% FNMA TO REDUCE COST			1,000,000.00 T		528.75	1,010,086.25
MAY 19 71		DISCOUNT CORP	2,000,000.00		2,000,000.00 T	957,500.00		
		NY HANSEATIC CORP		500,000.00	1,500,000.00 T		479,062.50	
		BANK OF AMERICA		500,000.00	1,000,000.00 T		479,375.00	1,009,148.75
JUL 1 71		PFT FROM 6.2% DUE 3-10-72 TO REDUCE COST			1,000,000.00 T		25.62	
JUL 15 71		" " 4.45% DUE 4-20-72 " "			1,000,000.00 T		962,500.00	1,009,060.63
JUL 15 71		HOUSTON NO TEXAS-Hart		1,000,000.00	.00 T		1,009,060.63	.00
SEP 23 71		A S HART CO	1,000,000.00		1,000,000.00 T	965,000.00		965,000.00
		CAROL MCENTE MCGINLY	15,000.00		1,015,000.00 T	14,662.50		
SEP 28 71		FIRST NO JAX TN		15,000.00	1,000,000.00 T		14,662.50	965,000.00
SEP 29 71		CAROL MCENTE MCGINLY	24,000.00		1,024,000.00 T	23,520.00		938,520.00
OCT 20 71		FIRST NO OXFORD MS		24,000.00	1,000,000.00 T		23,560.00	964,960.00
		HERT HART	4,000,000.00		5,000,000.00 T	984,375.00		
		MEMPHIS BK & TR CO	500,000.00		5,500,000.00 T	492,187.50		
		HARRIS TR & SAV		1,000,000.00	4,500,000.00 T		984,375.00	
		HERT HART		4,000,000.00	500,000.00 T		492,187.50	
OCT 21 71		HARRIS TRUST & SAV	500,000.00		1,000,000.00 T	970.00		
SEP 4 70		CARROLL MCENTEE NY	1,000.00		.00 T		970.00	
		BK CLARKSDALE MS		1,000.00				.00

LPFS
6/14 95½ 96½
6/15 95 96

@100

98½ 957,500 −
960 −
22,540 −

APPENDIX F

56

A S HART & CO
MEMPHIS BK BLDG
MPHS, TN 38103

ACCOUNT NO	AS			TRADE DATE	SETTLEMENT DATE
P 01-050-1255	AS [x] PRINCIPAL	[ ] AGENT		7/14/71	7/15/71
	WE HAVE BOUGHT FROM OR FOR YOU				

PAR VALUE	SECURITY	PRICE
1,000,000	FED. LAND BANKS, BONDS 5.30% DTD 4/20/71 DUE 10/21/74	96 1/2

PRINCIPAL	INTEREST PERIOD	INTEREST	SERVICE CHARGE	TOTAL
965,000.00	4/20 TO 7/15	12,513.89		977,513.89

DELIVERY INSTRUCTIONS

REDIT ACCT
RG

E PURCHASED	QUANTITY	DEBIT COST	DEBIT INVENTORY	DEBIT INTEREST	PROFIT AND L
Bank J			965,000.00	12,513.89	JUL 3 1

BEST COPY AVAILABLE

APPENDIX G

...EEPING COPY

...SD DEPARTMENT
U... ...STERS NATIONAL ... NK
P. O. BO... ...7 • MEMPHIS, TENN. 38101

AC 901-523 2911
TWX 901-278 1537

18

BERT HART

ACCOUNT NO			TRADE DATE	SETTLEMENT DATE
00-000-0000	AS [X] PRINCIPAL	[ ] AGENT	10/20/71	10/20/71 CASH
	WE HAVE SOLD TO OR FOR YOU			

PAR VALUE	SECURITY	PRICE
1 00,000	FED. LAND BANKS, BONDS 5.30% DTD 4/20/71 DUE 10/21/74	96.500

PRINCIPAL	INTEREST PERIOD	INTEREST	SERVICE CHARGE	TOTAL
65,000.00	4/20 TO 10/20	26,500.00		991,500.00

...VERY INSTRUCTIONS

...ECK

...GSID	QUANTITY	CREDIT COST	CREDIT INVENTORY	CREDIT INTEREST	PROFIT AND LOSS
			965,000 00	26,500 00	OCT 20 1971

APPENDIX H

...N PA... ...K
P. O. BOX ...7 • M... ...NN. 38101

AC ...901-523 2911
TWX 901-278 1537

BERT HART

ACCOUNT NO			TRADE DATE	SETTLEMENT DATE
00-000-0000	AS [ ] PRINCIPAL	[ ] AGENT	10/20/71	10/20/71 CASH
	WE HAVE BOUGHT FROM OR FOR YOU			

PAR VALUE	SECURITY	PRICE
1 ,000	FED. LAND BANKS, BONDS 5.30% DTD 4/20/71 DUE 10/21/74	98 14/32

PRINCIPAL	INTEREST PERIOD	INTEREST	SERVICE CHARGE	TOTAL
,375.00	4/20 TO 10/20	26,500.00		1,010,875.00

INSTRUCTIONS

...XXXXXXXXXX CHECK FOR DIFFERENCE OF SALE & PURCHASE

...8 Investment Department 991,500.00
...99 to Bert Hart 19,375.00

QUANTITY	DEBIT COST	DEBIT INVENTORY	DEBIT INTEREST	PROFIT AND LOSS
		984,375 00	26,500 00	OCT 20 1971

APPENDIX I

BOOKKEEPING COPY

BOND DEPARTMENT
UNION PLANTERS NATIONAL BANK
P. O. BOX 387 • MEMPHIS, TENN. 38101

8

HARRIS TRUST & SAVINGS BANK
1 CHASE MANHATTAN PLAZA
N.Y. N.Y. 10005

ACCOUNT NO 00-000-0000 AS [X] PRINCIPAL [ ] AGENT — TRADE DATE 10/20/71 — SETTLEMENT DATE 10/20/71 CASH

WE HAVE SOLD TO OR FOR YOU

PAR VALUE	SECURITY	PRICE
000,000	FED. LAND BANKS, BONDS 5.30% DTD 4/20/71 DUE 10/21/74	98 17/32

PRINCIPAL	INTEREST PERIOD	INTEREST	SERVICE CHARGE	TOTAL
85,312.50	4/20 TO 10/20	26,500.00		1,011,812.50

DELIVERY INSTRUCTIONS

ING TRUST VS PAYMENT
GE CHEMICAL

PURCHASED	QUANTITY	CREDIT COST	CREDIT INVENTORY	CREDIT INTEREST	PROFIT AND LOSS
			984,335 00	26,500 00	477 50

OCT 20 1971

APPENDIX J

BOOKKEEPING COPY

BOND DEPARTMENT
UNION PLANTERS NATIONAL BANK
P. O. BOX 387 • MEMPHIS, TENN. 38101

57

A. S. HART AND CO.
44 N. SECOND ST.
MEMPHIS BANK BLDG.
MEMPHIS, TN. 38103

ACCOUNT NO 01-050-1255 AS [X] PRINCIPAL [ ] AGENT — TRADE DATE 12/27/72 AS OF 12/26/72 — SETTLEMENT DATE 12/28/72

WE HAVE SOLD TO OR FOR YOU

PAR VALUE	SECURITY	PRICE
150,000	PITTSTON INC., CONV. DEB. 4.00% DTD 6/29/72 DUE 7/01/97	79.000 78.000

Val. Adj. 17,465.55

PRINCIPAL	INTEREST PERIOD	INTEREST	SERVICE CHARGE	TOTAL
117,000.00	6/29 TO 12/28	2,983.33		119,983.33

DELIVERY INSTRUCTIONS

U.S. VS PYT

Domestic Corp.

PURCHASED	QUANTITY	CREDIT COST	CREDIT INVENTORY	CREDIT INTEREST	PROFIT AND LOSS
465 55			137.465 55	2,983.33	3,000 00

DEC 28 1972

APPENDIX K

BOND DEPARTMENT
BOOKKEEPING COPY UP TOWN PLANTERS NATIONAL BANK
P. O. BOX 287 • MEMPHIS, TENN. 38101
AS 901-523 291
TWX 901-278-15

55

A.S. HART & CO.
44 N. SECOND ST.
MEMPHIS BANK BLDG.
MEMPHIS, TN 38103

ACCOUNT NO.			TRADE DATE	SETTLEMENT DATE
01-050-1255	AS [X] PRINCIPAL	[ ] AGENT	12/27/72	12/28/72

WE HAVE SOLD TO OR FOR YOU

PAR VALUE	SECURITY	PRICE
400,000	STATE OF LA. OFFSHORE EXPLORATION 1.00% DTD 10/17/72 DUE 10/01/82	94.000 94.000

Val. adj. 00
16,000

PRINCIPAL	INTEREST PERIOD	INTEREST	SERVICE CHARGE	TOTAL
376,000.00	10/17 TO 12/28	788.89		376,788.89

DELIVERY INSTRUCTIONS

F.S. VS. PAYMENT

Domestic Corp

DATE PURCHASED	QUANTITY	CREDIT COST	CREDIT INVENTORY	CREDIT INTEREST	PROFIT AND LOSS
10/17			400,000 00	788.89	8000 00

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APPENDIX L

BOND LEDGER
UNION PLANTERS NATIONAL BANK
MEMPHIS, TENN.

CLASS Domestic Corp.

NAME OF BOND PITTSTON INC. CONVERTIBLES

PURPOSE DEBS.

RATE 4 %

DATED 6-20-72

MATURITY 7-1-97

SHEET 1 A

REMARKS: Thru Fa: Trustees

INTEREST PAYABLE

PAYABLE AT

DATE	MATURITY	SOLD TO OR PURCHASED FROM	PAR VALUE DEBIT	PAR VALUE CREDIT	PAR VALUE BALANCE	BOOK VALUE DEBIT	BOOK VALUE CREDIT	BOOK VALUE BALANCE
[illegible]	DUE 97	MERRILL L. P. F. &S	100,000.00	700	100,000.00 Cr	100,000.00		100,000.00
AUG 2 72	DUE 97	" Redemption "			100,000.00 Cr		1,657.45	98,340.55
OCT 5 72	DUE97	ROBINSON HUMPHREY GA	50,000.00	78 1/4	150,000.00	39,125.00		137,465.55
DEC 28 72	DUE 97	A.S. HART CO MPHS		150,000.00	.00 Cr		137,465.55	.00
JAN 12 73	DUE 97	A. S. HART CO CITY	150,000.00	78.250	150,000.00 Dr	117,375.00		117,375.00
MAR 28 73	DUE 97	A. S. HART CO MPS		150,000.00	.00 Dr		117,375.00	.00
APR 3 73	DUE 97		150,000.00	74.	150,000.00	111,000.00		111,000.00
AUG 16 73	DUE 97	FREEMAN SECURITIES NY		150,000.00	.00		111,000.00	.00

BOND LEDGER
UNION PLANTERS NATIONAL BANK
MEMPHIS, TENN.

CLASS DOMESTIC CORPORATIONS

NAME OF BOND LOUISIANA STATE OF — RATE 1.00 % — SHEET 1 A

PURPOSE OFF SHORE EXPLORATION — DATED 10-17-72

REMARKS: DEBS. — MATURITY October 1-[illegible]

CHASE MANHATTAN — INTEREST PAYABLE April and October — PAYABLE AT

DATE	MATURITY	SOLD TO OR PURCHASED FROM	PAR VALUE			BOOK VALUE		
			DEBIT	CREDIT	BALANCE	DEBIT	CREDIT	BALANCE
OCT 17 72	DUE 82	LEHMAN BROS NY	400,000.00	100.000	400,000.00 T	400,000.00		400,000.00
DEC 28 72	DUE 82	A.S. HART CO CITY		400,000.00	.00 T	-	400,000.00	.00
JAN 12 73	DUE 82	A. S. HART CO CITY	400,000.00	94.250	400,000.00 T	377,000.00		377,000.00
FEB 27 73	DUE 82 ADJ.	CHASE MANHATTAN		93.75	400,000.00 T		2000.00	375,000.00
MAR 20 73	DUE 82	FREEMAN SECURITIES		100,000.00	300,000.00 T		93750.00	281,250.00
MAR 29 73	DUE 82	A. S. HART CO MPHS	--	300,000.00	.00 T		281,250.00	.00
APR 3 73	DUE 82		300,000.00	97 1/2	300,000.00 T	274,500.00		274,500.00
APR 17 73	DUE 82	FREEMAN SECURITIESK		300,000.00	.00 T		274,500.00	.00

APPENDIX M

BOOKKEEPING COPY

LOND DEPARTMENT
UNION PLANTERS NATIONAL BANK
P. O. BOX 387 • MEMPHIS, TENN. 38101

AC 901-523-2911
TWX 901-525-1555

104

A.S. HART & CO.
44 N. SECOND ST.
MEMPHIS BANK BLDG.
MEMPHIS, TN 38103

ACCOUNT NO.	AS:		TRADE DATE	SETTLEMENT DATE
01-050-1255	☐ PRINCIPAL	☐ AGENT	1/11/73	1/12/73

WE HAVE BOUGHT FROM OR FOR YOU AS OF 1-7-73

PAR VALUE	SECURITY	PRICE
150,000	PITTSTON, INC. 4.00% DUE 7/01/97	78.250 78.250

PRINCIPAL	INTEREST PERIOD	INTEREST	SERVICE CHARGE	TOTAL
117,375.00	1/01 TO 1/12	183.33		117,558.33

DELIVERY INSTRUCTIONS

BASE VS PYT

Domestic Corp.

PURCHASED	QUANTITY	DEBIT COST	DEBIT INVENTORY	DEBIT INTEREST	PROFIT AND LOSS
			117,375.00	183.33	JAN 12 '73

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BOND DEPARTMENT
UNION PLANTERS NATIONAL BANK
P. O. BOX 387 • MEMPHIS, TENN. 38101

AC 901-523 2511
TWX 901-278-1951

10/

A.S. HART & CO.
44 N. SECOND ST.
MEMPHIS BANK BLDG.
MEMPHIS, TN 38103

ACCOUNT NO. | TRADE DATE | SETTLEMENT DATE

P 01-050-1255 AS [X] PRINCIPAL [ ] AGENT 1/11/73 1/12/73

WE HAVE BOUGHT FROM OR FOR YOU AS OF 1-5-73

PAR VALUE	SECURITY	PRICE
400,000	LOUISIANA LAND OFFSHORE EXPL 1.00% DTD 10/17/72 DUE 10/01/82	94.250 94.250

PRINCIPAL	INTEREST PERIOD	INTEREST	SERVICE CHARGE	TOTAL
377,000.00	10/17 TO 1/12	944.44		377,944.44

DELIVERY INSTRUCTIONS

CHASE VS PYT

Domestic Corp.

DATE PURCHASED	QUANTITY	DEBIT COST	DEBIT INVENTORY	DEBIT INTEREST	PROFIT AND LOSS
			377000.00	944.44	JAN 12 1973

APPENDIX N

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BOND DEPARTMENT
UNION PLANTERS NATIONAL BANK
P. O. BOX 387 • MEMPHIS, TENN. 38101

AC 901-523
TWX 901-278

98

A.S. HART & CO.
44 N. SECOND ST.
MEMPHIS BANK BLDG.
MEMPHIS, TN 38103

ACCOUNT NO. | TRADE DATE | SETTLEMENT DATE

S 01-050-1255 AS [ ] PRINCIPAL [ ] AGENT 3/26/73 3/28/73

WE HAVE SOLD TO OR FOR YOU

PAR VALUE	SECURITY	PRICE
150,000	PITTSTON INC. 4.00% DUE 7/01/97	74.000 74.000

Del. Adj 6,375.00

PRINCIPAL	INTEREST PERIOD	INTEREST	SERVICE CHARGE	TOTAL
111,000.00	1/01 TO 3/28	1,450.00		112,450.00

DELIVERY INSTRUCTIONS

JRM
C

(Domestic Corp.

DATE PURCHASED	QUANTITY	CREDIT COST	CREDIT INVENTORY	CREDIT INTEREST	PROFIT AND LOSS
1.13 1.21.00 6375.00			117375.00	1450.00	MAR 28 '73

BOOKKEEPING COPY
112

BOND DEPARTMENT
UNION PLANTERS NATIONAL BANK
P. O. BOX 387 • MEMPHIS, TENN. 38101

AC 901-523-2911
TWX 901-278-193

A.S. HART & CO.
44 N. SECOND ST.
MEMPHIS BANK BLDG.
MEMPHIS, TN 38103

WE HAVE SOLD TO OR FOR YOU

$ 01-050-1255 AS [ ] PRINCIPAL [ ] AGENT

TRADE DATE 3/26/73 SETTLEMENT DATE 3/28/73

PAR VALUE	SECURITY	PRICE
300,000	STATE OF LA. LAND AND EXPO. DEBS. 1.00% DTD 10/17/72 DUE 10/01/82	91 1/2 91.500

Wt. Adj.
6,750.00

PRINCIPAL	INTEREST PERIOD	INTEREST	SERVICE CHARGE	TOTAL
274,500.00	10/17 TO 3/28	1,341.67		275,841.67

DELIVERY INSTRUCTIONS

JRM
C

Domestic Corp

QUANTITY	CREDIT COST	CREDIT INVENTORY	CREDIT INTEREST	PROFIT AND LOSS
		281,250.00	1,341.67	

APPENDIX O

BOOKKEEPING COPY
97

BOND DEPARTMENT
UNION PLANTERS NATIONAL BANK
P. O. BOX 387 • MEMPHIS, TENN. 38101

AC 901-523-291
TWX 901-278-19

A.S. HART & CO.
44 N. SECOND ST.
MEMPHIS BANK BLDG.
MEMPHIS, TN 38103

WE HAVE SOLD TO OR FOR YOU

$ 01-050-1255 AS [X] PRINCIPAL [ ] AGENT

TRADE DATE 3/26/73 SETTLEMENT DATE 3/28/73

PAR VALUE	SECURITY	PRICE
300,000	FORD MOTOR 4 7/8% DUE 7/15/98	105.000 105.000

PRINCIPAL	INTEREST PERIOD	INTEREST	SERVICE CHARGE	TOTAL
315,000.00	1/15 TO 3/28	2,965.63		317,965.63

DELIVERY INSTRUCTIONS

JRM
C

Domestic Corp

QUANTITY	CREDIT COST	CREDIT INVENTORY	CREDIT INTEREST	PROFIT AND LOSS
		315,000.00	2,965.63	

APPENDIX P

CLASS DOMESTIC

BOND LEDGER
UNION PLANTERS NATIONAL BANK
MEMPHIS, TENN.

NAME OF BOND FORD MOTOR CREDIT COMP.
PURPOSE Convertible Sub. Deb.
REMARKS: ~~3 Cross~~ manufacturers

RATE 4-7/8 %
DATED 7-15-72
MATURITY 7-15-98

SHEET A

INTEREST PAYABLE

PAYABLE AT

DATE	MATURITY	SOLD TO OR PURCHASED FROM	PAR VALUE DEBIT	PAR VALUE CREDIT	PAR VALUE BALANCE	BOOK VALUE DEBIT	BOOK VALUE CREDIT	BOOK VALUE BALANCE
JUL 31 72	DUE 98	GOLDMAN SACHS	100,000.00		100,000.00 T	100,000.00		100,000.00
OCT 16 72	DUE 98	GOLDMAN SACHS MEMPH	$100,000.00	98 1/4	200,000.00 T	98,250.00		198,250.00
OCT 30 72	DUE 98	GOLDMAN SACHS	100,000.00	96 1/2	300,000.00 T	96,500.00		294,750.00
NOV 9 72	DUE 98	GOLDMAN SACHS	100,000.00	101	400,000.00 T	101,000.00		393,750.00
NOV 13 72	DUE 98	FREEMAN SEC. CO NY	100,000.00	104 1/2	500,000.00 T	104,500.00		500,250.00
NOV 14 72	DUE 98	GOLDMAN, SACHS CO CITY		100,000.00	400,000.00 T		106,500.00	393,750.00
NOV 16 72	DUE 98	FREEMAN SECURITES CO	100,000.00	105 1/2	500,000.00 T	105,500.00		
	DUE 98	GOLDMAN SACHS MPHS	100,000.00	107.000	600,000.00 T	107,000.00		
	DUE 88	FREEMAN SECURITIES		100,000.00	500,000.00 T		106,375.00	
	DUE 98	FREEMAN SEC CO		100,000.00	400,000.00 T		107,000.00	392,875.00
NOV 17 72	DUE 98	GOLDMAN SACHS		100,000.00	300,000.00 T		108,250.00	
	DUE 98	FREEMAN SECURITIES		100,000.00	200,000.00 T		108,250.00	
	DUE 98	FREEMAN SEDCURITESS		100,000.00	100,000.00 T		109,000.00	67,375.00
NOV 20 72	DUE 98	ROOSEVELT & SONS		100,000.00	.00 T		109,000.00	
		OURSELVES TO CROSS SHEET			.00 T	41,625.00		.00
FEB 21 73	DUE 98	GOLDMAN SACHS NY	100,000.00	105 1/2	100,000.00 T	103,500.00		
	DUE 98	FREEMAN SECURITIES NY	100,000.00	105 1/4	200,000.00 T	105,250.00		210,750.00
FEB 23 73	DUE 98	FREEMAN SEC NY	100,000.00	102.000	300,000.00 T	102,000.00		312,750.00
FEB 26 73	DUE 98	FREEMAN SEC NY	100,000.00	103 1/4	400,000.00 T	103,250.00		416,000.00
MAR 5 73	DUE 98	FREEMAN SEC NY	100,000.00	99 1/2	500,000.00 T	99,500.00		515,500.00
MAR 12 73	UDUE 98	FREEMAN SEC NY		100,000.00	400,000.00 T		97,500.00	418,000.00
MAR 20 73	DUE 98	FREEMAN SE:	100,000.00	97	500,000.00 T	97,000.00		515,000.00
MAR 28 73	DUE 98	A. S. HART CO MPHS		300,000.00	200,000.00 T		315,000.00	200,000.00
APR 3 73	DUE 98	"	300,000.00	105.	500,000.00 T	315,000.00		515,000.00
APR 18 73	DUE 98	FREEMAN SE:	200,000.00	96.00	700,000.00 T	192,000.00		
	DUE 98	FREEMAN SE:	100,000.00	98,000	800,000.00 T	98,000.00		
	BBE1 98	FREEMAN SEC	100,000.00	99 1/2	900,000.00 T	99,500.00		904,500.00
APR 23 73	DUE 98	FREEMAN SEC		200,000.00	700,000.00 T		189,500.00	715,000.00
APR 24 73	DUE 98	FREEMAN SEC		100,000.00	600,000.00 T		93,750.00	621,250.00
APR 25 73	DUE 98	FREEMAN SEC	100,000.00	94 XX 1/2	700,000.00 T	94,500.00		
	DUE 98	FREEMAN SEC	100,000.00	93 1/2	800,000.00 T	93,500.00		809,250.00
APR 26 73	DUE 98	FREEMAN SEC		100,000.00	700,000.00 T		93,750.00	715,500.00
MAY 3 73	DUE 88	" "	100,000.00	92 3/8	800,000.00 T	92,375.00		807,875.00
MAY 7 73	DUE 98	FREEMAN SEC		200,000.00	600,000.00 T		179,000.00	628,875.00
MAY 8 73	DUE 98	FREEMAN SEC	100,000.00	92 1/4	700,000.00 T	92,250.00		721,125.00
MAY 10 73	DUE 98	FREEMAN SEC		100,000.00	600,000.00 T		90,500.00	630,625.00
MAY 16 73	DUE 98	FREEMAN SECURITIES	100,000.00		700,000.00 T	94,500.00		725,125.00
JUN 27 73	DUE 98	A S HART & CO		700,000.00	.00 T		725,125.00	.00
JUL 2 73	DUE 84 1/4		100,000.00		100,000.00 T	84,250.00		84,250.00
JUL 5 73	DUE 98	A. S. HART & CO	700,000.00	98.500	800,000.00 T	689,500.00		773,750.00
SEP 28 73	DUE 98	GOLDMAN SACHS NY		800,000.00	.00 T		773,750.00	.00

APPENDIX Q

BOOKKEEPING COPY

BOND DEPARTMENT
UP 'N PLANTERS NATIONAL B K
P. O. BOX 387 • MEMPHIS, TENN. 38101

AC 901-523-2911
TWX 901-278-1517

232

A.S. HART & CO.
44 N. SECOND ST.
MEMPHIS BANK BLDG.
MEMPHIS, TN 38103

ACCOUNT NO	AS ☐ PRINCIPAL ☐ AGENT	TRADE DATE	SETTLEMENT DATE
P 01-050-1255	WE HAVE BOUGHT FROM OR FOR YOU	3/28/73	4/03/73

PAR VALUE	SECURITY	PRICE
150,000	PITTSTON INC. 4.00% DUE 7/01/97	74.000 74.000

PRINCIPAL	INTEREST PERIOD	INTEREST	SERVICE CHARGE	TOTAL
111,000.00	1/01 TO 4/03	1,533.33		112,533.33

DELIVERY INSTRUCTIONS

CHASE VS PAYMENT
JRM
C_

Domestic Corp.

PURCHASED	QUANTITY	DEBIT COST	DEBIT INVENTORY	DEBIT INTEREST	PROFIT AND LOSS
			111,000.00	1,533.33	

BOOKKEEPING COPY

BOND DEPARTMENT
UNION PLANTERS NATIONAL BANK
P. O. BOX 387 • MEMPHIS, TENN. 38101

AC 901-523-2[illegible]
TWX 901-[illegible]

234

A.S. HART & CO.
44 N. SECOND ST.
MEMPHIS BANK BLDG.
MEMPHIS, TN 38103

ACCOUNT NO.	AS			TRADE DATE	SETTLEMENT DATE
P 01-050-1255	[ ] PRINCIPAL	[ ] AGENT	WE HAVE BOUGHT FROM OR FOR YOU	3/28/73	4/03/73

PAR VALUE	SECURITY	PRICE
300,000	STATE OF LA LAND AND EXPO. DEBS. 1.00% DTD 10/17/72 DUE 10/01/82	91 1/2 91.500

PRINCIPAL	INTEREST PERIOD	INTEREST	SERVICE CHARGE	TOTAL
274,500.00	~~10/17~~ 4/1- TO 4/03	16.67 ~~1,383.33~~ adj. made 11-30-73 X		275,883.33

DELIVERY INSTRUCTIONS

CHASE VS PAYMENT
JRM
C

Domestic Corp.

PURCHASED	QUANTITY	DEBIT COST	DEBIT INVENTORY	DEBIT INTEREST	PROFIT AND LOSS
			274,500.00	1,383.33	adj 3.33

BOOKKEEPING COPY

BOND DEPARTMENT
UNION PLANTERS NATIONAL BANK
P. O. BOX 387 • MEMPHIS, TENN. 38101

AC 901-523-291
TWX 901-[illegible]

230

A.S. HART & CO.
44 N. SECOND ST.
MEMPHIS BANK BLDG.
MEMPHIS, TN 38103

ACCOUNT NO	AS			TRADE DATE	SETTLEMENT DATE
P 01-050-1255	[X] PRINCIPAL	[ ] AGENT	WE HAVE BOUGHT FROM OR FOR YOU	3/28/73	4/03/73

PAR VALUE	SECURITY	PRICE
300,000	FORD MOTOR 4 7/8% DUE 7/15/98	105.000 105.000

PRINCIPAL	INTEREST PERIOD	INTEREST	SERVICE CHARGE	TOTAL
315,000.00	1/15 TO 4/03	3,168.75 X		318,168.75

DELIVERY INSTRUCTIONS

MANUFACTURERS VS PAYMENT
JRM
C

Domestic Corp

PURCHASED	QUANTITY	DEBIT COST	DEBIT INVENTORY	DEBIT INTEREST	PROFIT AND LOSS
			315,000.00	3,168.75	

BEST COPY AVAILABLE

APPENDIX R

CONFIRMATION

BOND DEPARTMENT
UNION PLANTERS NATIONAL BANK
P. O. BOX 387 • MEMPHIS, TENN. 38101

AC 901-523-2911
TWX 901-278-1337

2

A.S. HART & CO.
44 N. SECOND ST.
MEMPHIS BANK BLDG.
MEMPHIS, TN 38103

ACCOUNT NO	AS			TRADE DATE	SETTLEMENT DATE
S 01-050-1255	AS [X] PRINCIPAL	[ ] AGENT		6/26/73	6/27/73

WE HAVE SOLD TO OR FOR YOU AS OF 6/25/73

PAR VALUE	SECURITY	PRICE
700,000	FORD MOTOR CO. DEB. 4 7/8% DUE 7/15/98	98.500 58.500

PRINCIPAL	INTEREST PERIOD	INTEREST	SERVICE CHARGE	TOTAL
639,500.00	1/15 TO 6/27	15,356.25		701,356.25

DELIVERY INSTRUCTIONS

S. P. S. NEW YORK

APPENDIX S

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BOND DEPARTMENT
UNION PLANTERS NATIONAL BANK
P. O. BOX 387 • MEMPHIS, TENN. 38101

AC 901-523-2911
TWX 901-278-1337

3

A.S. HART & CO.
44 N. SECOND ST.
MEMPHIS BANK BLDG.
MEMPHIS, TN 38103

ACCOUNT NO	AS			TRADE DATE	SETTLEMENT DATE
P 01-050-1255	AS [X] PRINCIPAL	[ ] AGENT		6/26/73	6/27/73

WE HAVE BOUGHT FROM OR FOR YOU AS OF 6/25/73

PAR VALUE	SECURITY	PRICE
1,000,000	FED NATL MTG ASSN, DEBS 7.05% DUE 6/10/92	95 1/8

PRINCIPAL	INTEREST PERIOD	INTEREST	SERVICE CHARGE	TOTAL
951,250.00	6/10 TO 6/27	3,329.17		954,579.17

DELIVERY INSTRUCTIONS

MANUFACTURERS HANOVER

AS PURCHASED	QUANTITY	DEBIT COST	DEBIT INVENTORY	DEBIT INTEREST	PROFIT AND LOSS
		—	951,250.00	3,329.17	

#9

APPENDIX T

BOND LEDGER
UNION PLANTERS NATIONAL BANK
MEMPHIS, TENN.

CLASS INSTRUMENTALITIES

NAME OF BOND FED NATL MTG ASSN, DEBS

PURPOSE

REMARKS:

RATE 7.05 %

DATED 6-12-72

MATURITY 6-10-92

SHEET 1 A

INTEREST PAYABLE

PAYABLE AT

DATE	MATURITY	SOLD TO OR PURCHASED FROM	PAR VALUE DEBIT	PAR VALUE CREDIT	PAR VALUE BALANCE		BOOK VALUE DEBIT	BOOK VALUE CREDIT	BOOK VALUE BALANCE
JUN 12 72		FNB EASTERN AR FORREST	150,000.00		150,000.00	T	148,640.63		
		DISCOUNT CORP NY	1,000,000.00		1,150,000.00	T	1,000,625.00		
		AUBREY G LANSTON & CO	1,000,000.00		2,150,000.00	T	1,000,000.00		
		DISCOUNT CORP NY	500,000.00		2,650,000.00	T	499,375.00		
		FNATL CITY BK NY	500,000.00		3,150,000.00	T	500,156.25		
		HARRIS TR & SAV	500,000.00		3,650,000.00	T	499,062.50		
		HARRIS TR & SAV BK	500,000.00		4,150,000.00	T	500,937.50		
		BANKERS TR CO NY	150,000.00		4,300,000.00	T	150,000.00		
		CONTINENTAL ILL	250,000.00		4,550,000.00	T	250,000.00		
		BERTHART		500,000.00	4,050,000.00	T		499,531.25	
		BERT HART		1,000,000.00	3,050,000.00	T		1,000,000.00	
		BERT HART		500,000.00	2,550,000.00	T		500,312.50	
		DSCOUNT CORP NY		150,000.00	2,400,000.00	T		148,687.50	
		SEC DIST SEC CO NY		250,000.00	2,150,000.00	T		250,625.00	
		GOLDMAN SACHS & CO		500,000.00	1,650,000.00	T		501,562.50	
		FNB E ARK FORREST CITY		150,000.00	1,500,000.00	T		150,000.00	
		NY HANSEATIC CORP		500,000.00	1,000,000.00	T		496,718.75	1,001,359.38
JUN 14 72		DISCOUNT CORP	500,000.00		1,500,000.00	T	494,531.25		
		FNCITY BK NY		250,000.00	1,250,000.00	T		249,315.00	1,246,575.63
JUN 15 72		FNB CHICAGO ILL	250,000.00		1,500,000.00	T	247,343.75		1,493,919.38
JUN 21 72		FNB CHICAGO ILL		250,000.00	1,250,000.00	T		248,986.50	1,244,932.88
JUN 22 72		NY HANSEATIC CORP		250,000.00	1,000,000.00	T		248,986.75	995,946.13
JUN 27 72		FT BOSTON CORP NY		1,000,000.00	.00	T		995,946.13	.00
JUL 6 72		CARROLL MCENTEE NY	10,000.00		10,000.00	T	9,906.25		
		J F NORTON MIDDLETON TN		10,000.00	.00	T		9,906.25	.00
JUN 27 73		A S HART & CO	1,000,000.00		1,000,000.00	T	951,250.00		951,250.00
JUL 5 73		A S HART AND CO		1,000,000.00	.00	T		951,250.00	.00

APPENDIX U

A.S. HART & CO.
44 N. SECOND ST.
MEMPHIS BANK BLDG.
MEMPHIS, TN 38103

ACCOUNT NO | TRADE DATE | SETTLEMENT DATE

P 01-050-1255 AS [ ] PRINCIPAL [X] AGENT 7/02/73 7/05/73

WE HAVE BOUGHT FROM OR FOR YOUR A/C OF 6/29/73

PAR VALUE	SECURITY	PRICE
700,000	FORD MOTOR CO. DEB. 4 7/8% DUE 7/15/98	98.500 98.500

PRINCIPAL	INTEREST PERIOD	INTEREST	SERVICE CHARGE	TOTAL
689,500.00	1/15 TO 7/05	16,114.58		705,614.58

DELIVERY INSTRUCTIONS

MFG. HANOVER VS PYT

Domestic Corp.

PURCHASED	QUANTITY	DEBIT COST	DEBIT INVENTORY	DEBIT INTEREST	PROFIT AND LOSS
C			689,500.00	16,114.58	

APPENDIX V

BOND DEPARTMENT
UNION PLANTERS NATIONAL BANK
P. O. BOX 387 • MEMPHIS, TENN. 38101

AC 901-523-2011
TWX 901-278-1537

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15

A.S. HART & CO.
44 N. SECOND ST.
MEMPHIS BANK BLDG.
MEMPHIS, TN 38103

ACCOUNT NO			TRADE DATE	SETTLEMENT DATE
S 01-050-1255 AS	☐ PRINCIPAL	☐ AGENT	7/02/73	7/05/73

WE HAVE SOLD TO OR FOR YOU AS OF 6/29/73

PAR VALUE	SECURITY	PRICE
1,000,000	FED NATL MTG ASSN, DEBS 7.05% DUE 6/10/92	95 1/8

PRINCIPAL	INTEREST PERIOD	INTEREST	SERVICE CHARGE	TOTAL
951,250.00	6/10 TO 7/05	4,895.83		956,145.83

DELIVERY INSTRUCTIONS

SPS VS PYT

PURCHASED	QUANTITY	CREDIT COST	CREDIT INVENTORY	CREDIT INTEREST	PROFIT AND LOSS
			951,250.00	4,895.83	

United States of America vs.

United States District Court for

DEFENDANT: ALBERT S. HART

WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

DOCKET NO. CR-75-61

JUDGMENT AND PROBATION/COMMITMENT ORDER

COUNSEL

In the presence of the attorney for the government the defendant appeared in person on this date — MONTH DAY YEAR: April 23, 1976

[ ] WITHOUT COUNSEL However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

[X] WITH COUNSEL Brooke Lathram and B. C. Clifton, retained (Name of counsel)

PLEA

[ ] GUILTY, and the court being satisfied that there is a factual basis for the plea. [ ] NOLO CONTENDERE, [X] NOT GUILTY

FINDING & JUDGMENT

There being a ~~finding~~/verdict of
[ ] NOT GUILTY. Defendant is discharged
[X] GUILTY. as to Counts 1, 2, 4, 6, 8, 10, 12 & 13.

Defendant has been convicted as charged of the offense(s) of unlawfully combining, conspiring, confederating and agreeing with others in misapplying and causing to be misapplied the moneys, funds, credits and securities of the Union Planters National Bank of Memphis and causing to be made false entries in the books, reports and statements of said bank all in violation of Title 18, USC, §371 as set out in Count 1; and aiding and abetting with others with intent to deceive the senior officers of the Union Planters National Bank of Memphis, unlawfully making and causing to be made false entries in the books, reports and statements of said bank in violation of Title 18, USC, §1005 & §2 as set out in Count 2 and similar offenses as set out in Cts. 4,6,8,10,12 & 13.

SENTENCE OR PROBATION ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of TWENTY ONE MONTHS, with the condition that the defendant be confined in a jail type institution for a period of THREE MONTHS, the balance of the sentence of imprisonment is hereby suspended and the defendant placed on probation for EIGHTEEN MONTHS, as to each of Counts 1, 2, 4, 6, 12 & 13 to run concurrently and THREE MONTHS as to Count 8 to run concurrently making a total period of imprisonment of THREE MONTHS. The imposition of sentence is suspended as to Count 10 and the defendant placed on probation for a period of EIGHTEEN MONTHS to run concurrently making a total period of probation of EIGHTEEN MONTHS to follow said period of imprisonment. Said probationary period is conditioned upon good behavior as set forth in Probation Form #7 to which defendant shall affix his signature and same shall then be filed herein and a copy thereof shall be delivered to the defendant by the Probation Officer. The defendant may remain on his present bond pending appeal if an appeal be taken.

SPECIAL CONDITIONS OF PROBATION

Upon a not guilty verdict, Counts 3, 5, 7, 9, 11 & 14 be and are hereby dismissed.

FILED
APR 29 1976

ADDITIONAL CONDITIONS OF PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT RECOMMENDATION

The court orders commitment to the custody of the Attorney General and recommends,

that the defendant report to the designated institution at his own expense. (pending appeal)

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

SIGNED BY
[X] U.S. District Judge
[ ] U.S. Magistrate

APPROVED: _____, AUSA (Dft) 4-28-76

CERTIFIED AS A TRUE COPY ON
THIS DATE 29th of April 1976
By _____
( ) CLERK
(X) DEPUTY

Supreme Court, U. S.
FILED
OCT 3 1977
MICHAEL RODAK, JR., CLERK

No. 77-182

In the Supreme Court of the United States

OCTOBER TERM, 1977

ALBERT S. HART, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

DANIEL M. FRIEDMAN,
Acting Solicitor General,

BENJAMIN R. CIVILETTI,
Assistant Attorney General,

MERVYN HAMBURG,
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Washington, D.C. 20530.

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OPINION BELOW

The opinion of the court of appeals (Pet. App. A) is reported at 551 F. 2d 738.

JURISDICTION

The judgment of the court of appeals was entered on March 31, 1977. A petition for rehearing was denied on May 19, 1977 (Pet. App. B). The petition for a writ of certiorari was filed on July 8, 1977, and is therefore out of time under Rule 22(2) of the Rules of this Court. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether petitioner and his co-defendant, an officer of a national bank, violated 18 U.S.C. 1005 by causing entries to be made in the bank's ledgers that did not accurately portray the nature of their interest in stock transactions with the bank.

STATEMENT

Following a jury trial in the United States District Court for the Western District of Tennessee, petitioner was convicted of conspiracy to make false entries in the books of a national bank and to misapply money and securities of the bank, in violation of 18 U.S.C. 371, and seven substantive counts of making false entries, in violation of 18 U.S.C. 1005.[1] He was sentenced to a total of 21 months' imprisonment, all but three months of which were suspended in favor of probation. The court of appeals affirmed (Pet. App. A).

The evidence, which is not in dispute, is set forth in the opinion of the court of appeals. It shows that, at all times relevant to the charges in the indictment, petitioner was chairman of the board of A.S. Hart & Co., an investment firm in Memphis, Tennessee, and co-defendant William Grissom was vice-president of the Union Planters National Bank of Memphis, in charge of the bank's investment division (G.X. 7; Tr. 120, 138-139). Although the bank had a policy against participation by its employees in financial ventures involving the bank, Grissom nevertheless engaged in a number of financial transactions with the bank, concealing his interest with the assistance

[1]Petitioner was acquitted on seven counts of willful misapplication of money and securities of the bank, in violation of 18 U.S.C. 656.

of petitioner (Pet. App. A-2 to A-3). Grissom also used his official position with the bank improperly to accommodate petitioner when petitioner was short of funds or was unwilling to pay for securities he and Grissom had previously agreed to purchase. In return, petitioner aided Grissom in manipulations designed to conceal from the bank's management and the Comptroller of the Currency losses sustained by the investment division.[2]

In early April 1971, petitioner and Grissom decided to purchase from the bank for $1,000,000 certain Federal Land Bank bonds to be issued on April 20. The order was placed solely in petitioner's name, although Grissom agreed to share equally in the profit or loss (Tr. 79, 210). On the date of issuance the value of the bonds had declined to $985,000, however, and petitioner failed to pay for them (Tr. 215). Grissom then caused the bank to absorb the bonds in its trading account, using $1,000,000 of the bank's funds, while he and petitioner hoped the market would improve. Meanwhile, the original purchase order was either lost or misplaced, and the bonds were held in the bank's own safekeeping account rather than in a separate account maintained by the bank for customers' bonds (Tr. 394-395).

On June 15, 1971, petitioner borrowed funds from the Houston National Bank and used the proceeds of this loan to purchase the bonds in question. An entry in the ledgers of the Planters National Bank recorded June 15 as the original purchase date of the bonds, thereby concealing the earlier commitment by petitioner to purchase

[2]Co-defendant Grissom was convicted of the same offenses as petitioner and received concurrent sentences of six months' imprisonment and 24 months' probation. The court of appeals affirmed his conviction (Pet. App. A).

the same securities on April 20, 1971. A month later petitioner resold the bonds to the bank for $965,000, a price higher than their then-current market value (Tr. 216). This transaction was recorded on the bank's books as a final sale by petitioner alone (Pet. App. F). In fact, Grissom had a financial interest in the sale as petitioner's partner, and the sale was subject to an undisclosed unwritten commitment made by Grissom, on behalf of the bank, to resell the bonds to petitioner at any time for the same price, regardless of their market value. In October 1971, petitioner exercised his option and purchased the bonds for $965,000, after which he immediately resold them to the bank for the $984,375 market price (Tr. 217-218).[3]

Petitioner and Grissom also engaged in so-called "parking" transactions whereby the bank, through Grissom, sold certain securities to petitioner at the end of a quarterly period, at a price equal to the original cost of the securities to the bank, subject to a concealed oral agreement to repurchase them at the beginning of the next period. By recording the transactions as final sales, Grissom was able to avoid listing in quarterly reports prepared for the Comptroller of the Currency that certain securities had declined in value and were being held at a loss. See 12 C.F.R. 18.6(c) (1976). Thus, Grissom was able to overstate the profits of the investment division and conceal losses on the "parked" securities. Petitioner and Grissom were convicted of engaging in several "parking" transactions between December 1972 and June 1973. In each instance,

[3]The false entries associated with the Federal Land Bank bond purchases by petitioner and Grissom were charged in counts II, IV, and VI of the indictment (Pet. App. A-16, A-17, A-18 to A-19). Evidence of several similar joint transactions between March 1971 and April 1973, involving the bank, was admitted at trial to show a pattern of conduct (Tr. 201, 218-237). See Fed. R. Evid. 404(b).

the "sale" to petitioner of the "parked" securities was recorded in the bank ledgers as final (Pet. App. A-4).[4]

On one occasion petitioner, in order to raise the cash necessary to participate in a "parking" transaction, "sold" certain debentures to the bank. This transaction was recorded in the bank ledgers as final, although it was subject to an unwritten, undisclosed understanding with Grissom that the debentures would be repurchased by petitioner (Tr. 1055, 1245-1253).[5] Grissom was discharged by the bank in June 1973, when his "parking" practices were discovered (Pet. App. A-5).

ARGUMENT

Petitioner contends (Pet. 23-42) that, because the undisclosed repurchase arrangements with Grissom were oral and therefore unenforceable under the Tennessee statute of frauds, the entries in the bank records were not false because they accurately reflected legal realities in representing transactions as final sales. We note at the outset that, in light of petitioner's receipt of concurrent sentences on the counts on which he was convicted, the Court need not review petitioner's claim as to each count if it determines that his conviction on the conspiracy count or any of the substantive counts except counts VIII and X is valid.[6] *Andresen* v. *Maryland*, 427 U.S. 463, 469,

[4]These "sales" were charged as overt acts in the conspiracy count of the indictment (Pet. App. A-12 to A-15) and as substantive counts VIII, X, and XIII (*id.* at A-19, A-20 to A-21, A-23).

[5]This false entry was charged in count XII of the indictment (Pet. App. A-22).

[6]Equal concurrent sentences of 21 months' imprisonment (all but three months of which were suspended with probation) were imposed on the conspiracy count (count I), three counts charging false entries relating to the purchase by petitioner and Grissom of the Federal Land Bank bonds (counts II, IV, and VI), and two counts

n. 4; *Barnes* v. *United States*, 412 U.S. 837, 848, n. 16. Furthermore, the validity of petitioner's conviction on count II (which alleged as false the entry that petitioner was the sole owner of the Federal Land Bank bonds) does not depend upon the correctness of petitioner's statute of frauds theory.

In any event, petitioner's claim was properly rejected by the courts below. As the court of appeals noted (Pet. App. A-5 to A-6), there was ample evidence for the jury to conclude that the bank entries reflecting the so-called "final" sales of securities to petitioner were false, *i.e.*, they were "intentionally made to represent what is not true or does not exist, with the intent either to deceive [bank] officers or to defraud the association." *Agnew* v. *United States*, 165 U.S. 36, 52. The transactions recorded as final were in fact conditional upon unrevealed repurchase agreements or other terms flatly inconsistent with finality. As petitioner acknowledges, the transactions were in effect either unauthorized loans secured by the stocks or bonds being "sold" (Pet. 7) or devices designed to allow removal of certain securities from the bank's ledgers temporarily (Pet. 16). The obvious purpose was to deceive the bank's officers and the Comptroller of the Currency while advancing the personal interests of the parties to the transactions.

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relating to "parking" transactions on June 27, 1973, whereby the bank "purchased" securities from petitioner valued at $1,000,000 and "sold" to petitioner other securities valued at $700,000 (counts XII and XIII). Petitioner was also convicted of false entries relating to two other "parking" transactions (counts VIII and X). On count VIII, he was sentenced to three months' imprisonment, to run concurrently with the other sentences; imposition of sentence was suspended on count X and petitioner was placed on a concurrent term of 18 months' probation (Pet. App. W).

Petitioner's assertion that the existence of a state statute of frauds somehow transformed these false and fraudulent entries into truthful ones is insubstantial. That statute, while rendering unwritten agreements unenforceable "by way of action or defense" (Tenn. Code Ann. § 47-8-319 (1964 Repl.)), does not render them void. See, *e.g.*, *Joseph E. Seagram & Sons, Inc.* v. *Shaffer*, 310 F. 2d 668, 673 (C.A. 10), certiorari denied, 373 U.S. 948; *Hewitt* v. *Hutter*, 406 F. Supp. 976, 980 (W.D. Va.). To equate a contract term's technical unenforceability in court with its non-existence, as petitioner urges, would permit bankers to employ sham tactics to manipulate records and would thus defeat the purpose of the federal false entry statute, which is "to give assurance that upon an inspection of a bank, public officers and others would discover in its books of account a picture of its true condition." *United States* v. *Darby*, 289 U.S. 224, 226. See also *United States* v. *Giles*, 300 U.S. 41, 48-49; *Phillips* v. *United States*, 406 F. 2d 599, 601 (C.A. 10). "It cannot be the law that officers of a bank may make a sham entry with the intent to deceive, and yet, merely because they go through the idle and deceitful form of making a transaction to which the entry might nominally but cannot really relate, protect themselves from the consequences of their real conduct. Such a holding would facilitate the vicious practice condemned by law." *Billingsley* v. *United States*, 178 Fed. 653, 663 (C.C.A. 8). Indeed, petitioner's claim that the transactions in issue were actually final sales because of the statute of frauds rings especially hollow in light of the fact that, in every instance, the allegedly unenforceable repurchase agreements were honored.

Nor is petitioner correct in asserting that the only alternative to entering the sales as final would have been to record the repurchase agreements themselves as though they were binding, which may have been equally deceptive (Pet. 27). On the contrary, options existed that would

have eiiminated the deceptive character of the entries. The entries reflecting sales of securities could have omitted reference to their finality and could instead have contained notations revealing the existence of oral understandings materially affecting the transactions. The agreements to repurchase could also have been reduced to writing and appropriately published. Of course, if the truth had been known, the bank undoubtedly would have nullified the transactions and would have taken disciplinary action against Grissom. Finally, compliance with the statute could have been assured by one alternative petitioner fails to discuss: not to engage in the conditional sales with Grissom at all. See *Minor* v. *United States*, 396 U.S. 87, 97.

United States v. *Docherty*, 468 F. 2d 989 (C.A. 2), upon which petitioner relies, is inapposite. In that case the court of appeals held that Section 1005 was not violated by a defendant who had been deceived by his friend, a bank employee, into borrowing money from the bank and giving it to the friend. Not only were the entries on the bank's ledger in *Docherty* made without criminal intent on the part of the defendant, but also they were totally accurate to describe the apparent as well as the actual substance of the loan transactions. By contrast, petitioner was an experienced dealer in securities and a conscious partner to the sham transactions falsely reflected in the records of the bank. The entries here did not reflect actual transactions exactly as they occurred. By the same token, the decision below is not inconsistent with cases involving truthful entries of fraudulent transactions (*e.g.*, *State* v. *Heron*, 94 Ariz. 81, 381 P. 2d 764 (Sup. Ct.) or other wrongful conduct committed by a bank official that did

not affect the accuracy of the entries he made in the bank's records (*e.g.*, *Crenshaw* v. *United States*, 116 F. 2d 737 (C.A. 6)).[7]

In sum, petitioner's claims amount to nothing more than that he and Grissom believed that the book entries actually reflected the financial transactions that had occurred and that they therefore acted without criminal intent. The jury found otherwise on the basis of substantial evidence that petitioner and Grissom intended to defraud the bank and to deceive the bank's officers and the Comptroller of the Currency.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

DANIEL M. FRIEDMAN,
*Acting Solicitor General.**

BENJAMIN R. CIVILETTI,
Assistant Attorney General.

MERVYN HAMBURG,
SARA CRISCITELLI,
Attorneys.

SEPTEMBER 1977.

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[7]Petitioner also contends (Pet. 42-44) that his conspiracy conviction cannot stand because count 1 charged an unlawful agreement to commit two criminal acts, and the proof at best showed a conspiracy to commit only one of the offenses. Since, as we have shown, petitioner was properly convicted of causing a number of false entries to be made on the bank's ledgers, his conspiracy conviction was also valid.

*The Solicitor General is disqualified in this case.